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PUBLIC UTILITIES REPORTS

ANNOTATED

Containing Decisions
of the Public Service
Commissions and of
State and Federal Courts

1915 A

THE
LAWYERS CO-OPERATIVE PUBLISHING COMPANY
ROCHESTER, NEW YORK

PUBLIC UTILITIES REPORTS ANNOTATED

Containing Decisions
of the Public Service
Commissions and of
State and Federal Courts

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THE LAWYERS CO-OPERATIVE PUBLISHING CO.

1915 A

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E. R. ANDREWS PRINTING CO., Rochester, N. Y.

PREFACE

This is the first volume of *Public Utilities Reports Annotated*. This series will include the important decisions concerning public utilities, whether rendered by the Commissions of the various states or by the Courts. The index constitutes a complete syllabus digest of the volume. There is a complete table of all the cases in the volume alphabetically arranged, with a separate list also of the cases from each of the Commissions. A separate list of Appeals, Rehearings, and Modifications is added to show any supplemental action taken in any case after the report of it has been published. This series begins with cases decided since the beginning of 1915.

Annotations to the cases give careful reference to prior pertinent decisions of either Commissions or Courts. The importance of this feature will increase as the series goes on.

The editorial preparation of these reports is entirely in the hands of the publishers' permanent staff, in special charge of Mr. Henry C. Spurr, who has had exceptional experience in the investigation and compilation of the decisions of the Courts and Commissions on this branch of the law. The completeness and thoroughness of his work in this field can be seen from his extensive annotations in 48 *Lawyers Reports Annotated* (New Series) pp. 1037, 1063, 1092, 1146, 1196, and similar annotations in subsequent volumes of that series of reports. In the launching of this series of reports for a new class of tribunals, the publishers have sought the best expert advice and counsel in order that they might adopt, at the beginning, the best possible policy and methods for the publication. They highly appreciate very valuable aid and suggestions from a considerable number of the public service commissioners who have taken large interest in this enterprise, and shall be very grateful to any commissioner who may suggest anything to improve the series in any respect. They also acknowledge the valuable expert services in this respect

of Mr. A. S. Hills, formerly in charge of the Bureau of Commission Research of the Legal Department of the American Telephone & Telegraph Company, and of Messrs. Smith, Knowlton & Hatch, attorneys at law, Colorado Springs, Colorado, who have for some years given special attention as practising attorneys to the subject of public utility regulation. The remarkable collection of materials which they had accumulated on the law of this subject has been most generously made available for our use at this time.

The syllabi or headnotes for the cases will be usually prepared by the editors. For most cases the commissioners prepare no syllabi, and those which are prepared by the various Commissions are by no means alike in form and method. Such lack of uniformity in syllabi makes it impossible to combine them into a volume index, and afterwards into digests of the series, without causing serious defects. To avoid such defects great care will be used to see that all the syllabi, by whomever made, are cast in the best possible form for use when combined with others in an index or digest. Nothing of substance in syllabi prepared by the commissioners will be overlooked, even if their form may be changed. It is to be understood that syllabi are prepared by the editors unless otherwise stated; if prepared by the commissioners, that fact will be expressly stated.

Rochester, N. Y., April, 1915.

ABBREVIATIONS OF COMMISSION REPORTS

Ann. Rep. Ala. R. C.	Annual Report of the Alabama Railroad Commission.
" " Ariz. C. C.	Annual Report of the Arizona Corporation Commission.
" " Ariz. R. C.	Arizona Railway Commission Annual Reports. 1909-10.
" " Ark. R. C.	Arkansas Railroad Commission Annual Reports.
" " Cal. Bd. R. C. ...	California Board of Railroad Commissioners. Annual Reports.
" " Can. R. C.	Board of Railway Commissioners of Canada Annual Reports.
" " Colo. P. U. C. ...	Annual Report of the Colorado Public Utilities Commission.
" " Conn. P. U. C. ..	Annual Report of the Connecticut Public Utilities Commission.
" " Conn. R. C.	Annual Report of the Connecticut Railroad Commissioners. 1853-1911.
" " Dist. Col. P. U. C. ...	Annual Report of the District of Columbia Public Utilities Commission.
" " Fla. R. C.	Annual Report of the Railroad Commissioners for the State of Florida.
" " Ga. R. C.	Annual Report of the Railroad Commission of Georgia.
" " Houston, Tex., P. S. C.	Houston, Texas, Public Service Commissioner, Annual Reports.
" " Ia. R. C.	Annual Report of the Iowa Board of Railroad Commissioners.
" " Ida. P. U. C.	Annual Report of the Idaho Public Utilities Commission.
" " Ill. P. U. C.	Annual Report of the Public Utilities Commission of Illinois.
" " Ill. R. & W. C. ...	Annual Report of the Illinois Railroad and Warehouse Commission. 1871-1913.
" " Ind. P. S. C.	Annual Report of the Indiana Public Service Commission.
" " Ind. R. C.	Annual Report of the Railroad Commission of Indiana. 1906-1912.

- Ann. Rep. Kan. R. C. Annual Report of the Railroad Commissioners of Kansas.
- " " Ky. R. C. Annual Report of the Kentucky Railroad Commission.
- " " La. R. C. Annual Report of the Railroad Commission of Louisiana.
- " " Los Angeles Bd. P. U. Los Angeles, Cal., Board of Public Utilities Annual Reports. 1909-1913.
- " " Manitoba P. U. C. Manitoba Public Utilities Commission, Canada, Annual Reports.
- " " Mass. G. & E. L. C. Annual Report of the Massachusetts Board of Gas and Electric Light Commissioners.
- " " Mass. High Com. Annual Report of the Massachusetts Highway Commission. (Tel. Cos.)
- " " Mass. P. S. C. Annual Report of the Massachusetts Public Service Commission.
- " " Mass. R. C. Annual Report of the Massachusetts Board of Railroad Commissioners.
- " " Md. P. S. C. Annual Report of the Maryland Public Service Commission.
- " " Me. P. U. C. Annual Report of the Public Utilities Commission of Maine.
- " " Me. R. C. Annual Report of the Board of Railroad Commissioners of Maine.
- " " Mich. R. C. Annual Report of the Michigan Railroad Commission.
- " " Minn. R. & W. C. Annual Report of the Minnesota Railroad and Warehouse Commission.
- " " Mo. R. & W. C. Annual Report of the Missouri Railroad and Warehouse Commission.
- " " Mo. R. C. Annual Report of the Missouri Board of Railroad Commissioners. 1875-1889.
- " " Mont. R. & P. S. C. Annual Report of the Railroad and Public Service Commission of Montana.
- " " Mont. R. C. Annual Report of the Railroad Commission of Montana.
- " " N. C. C. C. Annual Report of the North Carolina Corporation Commission.
- " " N. C. R. C. Annual Reports of the North Carolina Board of Railroad Commissioners. 1891-1898.
- " " N. D. C. of R. Annual Report of the North Dakota Commissioners of Railroads. 1890-1912.
- " " N. D. R. C. Annual Report of the Board of Railroad Commissioners of North Dakota.
- " " Neb. Bd. Trans. Annual Report of the Nebraska Board of Transportation. 1887-1900.

- Ann. Rep. Neb. R. C. Annual Report of the Nebraska Board of Railroad Commissioners. Only 1st Annual Report. 1885.
- " " Neb. S. R. C. . . . Annual Report of the Nebraska State Railway Commission.
- " " Nev. P. S. C. . . . Annual Report of the Public Service Commission of Nevada.
- " " Nev. R. C. Annual Report of the Railroad Commission of Nevada.
- " " N. H. P. S. C. . . . Annual Report of the New Hampshire Public Service Commission.
- " " N. H. R. C. Annual Report of the New Hampshire Board of Railroad Commissioners.
- " " N. J. R. C. New Jersey Board of Railroad Commissioners Annual Reports. 1907-1910.
- " " N. M. S. C. C. . . . Annual Report of the State Corporation Commission of New Mexico.
- " " Nova Scotia P. U. C. Nova Scotia Board of Commissioners of Public Utilities, Canada, Annual Reports.
- " " N. Y. R. C. New York Railroad Commission Reports, ——— 1906.
- " " Ohio C. of R. & T. . . . Annual Report of the Ohio Commissioner of Railroads and Telegraphs. 1867-1905.
- " " Ohio P. S. C. . . . Annual Report of the Public Service Commission of Ohio. 1912.
- " " Ohio P. U. C. . . . Annual Report of the Public Utilities Commission of Ohio.
- " " Ohio R. C. Annual Report of the Railroad Commission of Ohio. 1906-1911.
- " " Okla. C. C. Annual Report of the Corporation Commission of Oklahoma.
- " " Ontario Ry. & Mun. Bd. Ontario Railway and Municipal Board, Ontario, Canada, Annual Reports.
- " " Ore. R. C. Annual Report of the Oregon Railroad Commission.
- " " Pa. P. S. C. Annual Report of the Pennsylvania Public Service Commission.
- " " Pa. S. R. C. Annual Report of the Pennsylvania State Railroad Commission.
- " " Quebec P. U. C. . . . Quebec Public Utilities Commission, Canada, Annual Reports.
- " " R. I. P. U. C. . . . Annual Report of the Public Utilities Commission of Rhode Island.
- " " R. I. R. C. Rhode Island Railroad Commissioner Annual Reports. 1889-1911.
- " " S. D. R. C. Annual Report of the South Dakota Railroad Commissioners.
- " " Tex. R. C. Annual Report of the Railroad Commission of Texas.

- Ann. Rep. Va. S. C. C. Annual Report of the State Corporation Commission of Virginia.
- “ “ Vt. R. C. Annual Report of the Railroad Commissioners of Vermont.
- “ “ Wash. P. S. C. .. Annual Report of the Public Service Commission of Washington.
- “ “ Wash. R. C. Annual Report of the Railroad Commission of Washington.
- “ “ Wilmington, Del.,
P. U. C. Wilmington, Del., Board of Public Utility Commissioners Annual Reports.
- “ “ W. V. P. S. C. .. Annual Report of the Public Service Commission of West Virginia.
- A. T. & T. Co. Com. L. American Telephone and Telegraph Company Commission Leaflet.
- “ “ C. T. C. American Telephone and Telegraph Company Commission Telephone Cases.
- Bien. Rep. Cal. Bd. R. C. California Board of Railroad Commissioners Biennial Reports.
- “ “ Col. S. R. C. Colorado State Railroad Commission Annual Reports. 1907-14.
- “ “ Kan. P. U. C. ... Biennial Report of the Kansas Public Utilities Commission.
- “ “ Miss. R. C. Biennial Report of the Mississippi Railroad Commission.
- “ “ Vt. P. S. C. Biennial Report of the Public Service Commission of Vermont.
- Cal. R. C. R. California Railroad Commission Reports.
- Can. Ry. Cases Canada Railway Cases (in 16 vols. to date).
- Fed. Tr. Rep. Federal Trade Reporter.
- Hawaii P. U. C. Hawaii Public Utilities Commission.
- Ill. R. & W. C. D. Decisions of the Railroad and Warehouse Commission of Illinois.
- Inters. Com. Rep. Interstate Commerce Commission Reports.
- K. C. Mo. P. U. C. Kansas City, Mo., Public Utilities Commission Reports. 1st Semi-Annual, 1909. 1st Annual, 1911.
- Mo. P. S. C. R. Missouri Public Service Commission Reports.
- N. B. Bd. P. U. C. New Brunswick Board of Public Utilities Commissioners, Canada.
- N. H. P. S. C. R. N. H. Pub. Ser. Commission Reports.
- N. J. P. U. C. R. Reports of the Board of Public Utilities Commissioners of New Jersey.
- P. I. P. U. C. Philippine Islands Public Utilities Commission.
- P. S. C. (1st Dist. N. Y.) .. Public Service Commission Reports, First District New York.
- P. S. C. (2d Dist. N. Y.) .. Public Service Commission Reports, Second District New York.
- P. S. Reg. Public Service Regulation.
- Rate Res. Rate Research, published by the National Electric Light Association.

ABBREVIATIONS.

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R. I. Bd. R. C.	Rhode Island Board of Railroad Commissioners Reports.
St. J. Mo. P. U. C.	St. Joseph, Mo., Public Utilities Commission. (No regular reports.) 1909-1913.
St. L. Mo. P. S. C.	St. Louis, Mo., Public Service Commission.
Tenn. R. C.	Tennessee Railroad Commission (no decisions published). Annual Reports. 1897-1912.
Wis. R. C. R.	Wisconsin Railroad Commission Reports.

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In Re Idaho Light & Power Co., p. 2.

Rehearing denied Feb. 12, 1915. Order No. 205.

Indiana.

In Re Application of Indiana Gaslight Company, p. 37.

Supplemental order Feb. 6, 1915, requiring filing of inventory, profiles, contracts, engineers' reports, records, books of accounts, etc., etc.

Wisconsin.

In Re Janesville Water Company, p. 178.

Modification of order. Feb. 20, 1915, on p. 1047.

John J. Blaine v. Chicago, Milwaukee, & St. Paul R. Co., p. 266.

Supplemental order. March 12, 1915, see note P.U.R. 1915B, on p. 198.

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California.

Charles E. Warren and Herbert Pash v. Pacific Gas & Electric Company, p. 702.

Rehearing denied, Feb. 24, 1915.

In Re Cady, note, p. 797.

Amendment of order, Application No. 1511, March 11, 1915. Decision No. 2205. Interest rate upon a note of \$10,000 increased from not to exceed 7 per cent per annum to not to exceed 8 per cent per annum; maturity of such note reduced from two years to one year after date.

Massachusetts.

Re Northampton Gas Co., p. 618.

Conditional acceptance of recommendation of Commission, on p. 1109.

PUBLIC UTILITIES REPORTS

ANNOTATED

CALIFORNIA RAILROAD COMMISSION.

MARY BELLE HARDISON

v.

LOS ANGELES GAS & ELECTRIC CORPORATION.

[Case No. 725.]

Service — Priority of extensions.

In the absence of any showing as to the merits of prior requests for extensions, an extension of service well within the reasonable service area of a gas company, and admitted by it to be necessary, was ordered without awaiting the completion of such extensions requested prior thereto.

[January 8, 1915.]

APPLICATION for extension of gas service in South Pasadena;
granted.

Appearances: Mary Belle Hardison *in propria persona*;
Paul Overton for defendant.

REPORT OF THE COMMISSION.

Edgerton, Commissioner: By this complaint it is sought to compel Los Angeles Gas & Electric Corporation to extend its pipe and furnish service to the property owned by complainant in the city of South Pasadena.

Defendant is the sole distributor of gas in the city of South Pasadena, and the distance between its present line and the

property of complainant by the shortest route is 288 feet, and by a longer route 335 feet.

A representative of defendant testified that if the extension was to be made it would be preferable to put it in over the longer route, as there was more prospect of additional business to be had.

Complainant owns an eleven-room house in the city of South Pasadena, to which she asks that the extension be made, and she has rented this house for hospital purposes and she maintains that there will be a considerable consumption of gas by the tenant.

Defendant does not contend that this extension should not be made, but, on the contrary, the testimony shows that defendant has heretofore agreed to make it. It is urged, however, that it should be made in its proper turn, after the completion of extensions asked for prior to the time when this one was demanded.

We are not advised as to the merits of the extensions now listed by defendant as ones proper to be made in their order, and we have only before us this particular request for an extension. It appears from the testimony that this is an extension well within the reasonable service area of this company, and I believe there to be sufficient justification for ordering it in. Therefore, I recommend that an order be made that defendant extend its main, at its own expense, so as to serve the property of complainant with gas.

Note.—An order was made in compliance with the above report, the defendant being required to complete said extension within a period of fifteen days from the date of said order.

IDAHO PUBLIC UTILITIES COMMISSION.

IN RE IDAHO LIGHT AND POWER COMPANY.

[Case No. F—40; Order No. 194.]

Statutes — Interpretation — Adopted act.

The Idaho public utility law having been taken almost literally from the California law, the interpretation theretofore placed upon the latter statute by the California Commission was presumptively adopted.

Certificate of convenience — Policy as to competition.

Upon an application for a certificate of public convenience and necessity by a public service corporation desiring to enter a field already occupied, the Idaho Commission, following the California rule, will grant the certificate if it is shown that the existing company was not performing its duty to the public at the time of the threatened competition, and the applicant is able and ready to render the required service at reasonable rates.

Service — Heating — Electricity — Adequacy.

An electric utility was found by the Idaho Commission to be rendering reasonably good service to the community which it served, notwithstanding the unsatisfactory character of its heating service, on the ground that electricity from an economic standpoint is too expensive to be used for heating purposes.

Certificate of convenience — Unreasonable rates — Field not fully occupied.

A certificate of public convenience and necessity was granted under the public utilities act of Idaho to an electric company seeking to enter a field already occupied, where the evidence showed that, although the existing company was rendering reasonably good service, it was not doing so at reasonable rates at the time the territory in question was first threatened with competition, and was not completely occupying the entire territory; and where it further appeared that the entering company could furnish power as cheaply as, if not more cheaply than, the occupying company.

Monopoly and competition — Certificate of convenience — Service of existing company.

Unless it is shown that the utility desiring to enter a competitive field can give such service as will be a positive advantage to the public, a certificate of convenience will be denied by the Idaho Commission, provided that the existing utility is furnishing adequate service at reasonable rates at the time of the threatened competition.

[January 16, 1915.]

APPLICATION for a certificate of public necessity and convenience by an electric power and light company desiring to enter a field already occupied; granted.

Appearances: Jess B. Hawley and H. R. Waldo for the Idaho Power & Light Company; S. H. Hays for the Great Shoshone & Twin Falls Water Power Company.

Ramstedt and Graham, Commissioners: On November 7th, 1914, this Commission rendered its decision in the above-entitled case, denying the applicant the certificate prayed for. See Order No. 169. Thereafter a petition for rehearing was filed by the

applicant, on November 28th, 1914, and on December 9th, 1914, an order granting a rehearing was made and entered. The rehearing began on the 31st day of December, 1914, and continued from day to day, and finally concluded on January 4, 1915. Oral argument was made before the Commission on January 8, 1915, and the matter finally resubmitted.

On April 11, 1914, the Idaho Power & Light Company filed with the Public Utilities Commission of the state of Idaho a petition that it be granted a certificate that the present and future public convenience and necessity require and will require the construction of electric transmission and distribution lines and system in the counties of Twin Falls, Gooding, and Lincoln, state of Idaho, and certain cities and villages therein named. The petition sets forth that the applicant is a corporation organized and existing under the laws of the state of Nevada and doing business in the state of Idaho, with its principal place of business in Boise, Idaho; and that applicant has complied with all laws of the state of Idaho applicable to foreign corporations doing business within the state; that prior to February, 1911, certain development work had been carried on by one L. L. Nunn and his associates and predecessors in interest, toward utilizing for hydro-electric generating purposes the waters of Malade river, in what was then Lincoln county, and now Gooding county, Idaho; that the Malade river is a stream of particular value for power purposes, due to its short and rapid course, the uniformity of its flow, and the high temperature of its waters, the same being free from slush-ice, common to most streams in southern Idaho; that the stream is located conveniently for the distribution of current to southern, southwestern, and south-central Idaho; is capable of generating approximately 25,000 horse power of electrical energy at lower cost than any other stream reasonably adjacent to the territory; that in February, 1911, the Beaver River Power Company, a corporation of the state of Colorado, purchased and acquired of the said Nunn and his associates the water right and developments of various kinds owned by the latter upon said river; and thereafter the said Beaver River Power Company continued in the development of the waters of said river under a permit issued to it by the state engineer of Idaho on February

22, 1909; that under the terms of said permit, one fifth of the work of diversion was required to be completed by the 22d day of August, 1912, and the whole thereof by the 22d day of February, 1914, all of which had been done, and the date of the application of the water to beneficial use was fixed in said permit at February 22, 1918; that under the plan of development two stations were to be constructed, each with approximately 12,500 horse-power capacity; that the Beaver River Power Company carried on the work of development diligently under the terms of said permit, and in February, 1912, had developed one unit fully installed of 7,500 horse power capacity, and that full water conduit capacity for the additional unit had been constructed; that while carrying on this development of water power the said company had also completed a transmission line from its station westward a distance of about 95 miles, to Boise, Idaho, for the purpose of supplying the cities, towns, and villages and their inhabitants of the territory contiguous to said line, with electrical power for all purposes; that \$500,000 had been expended in such development, and the unit aforesaid was put into operation and supplied current along said transmission line in the spring of 1912, and continuously since said date; that during the spring of 1912, a transmission line of about 12 miles in length was constructed from the plant aforesaid to the town of Gooding, in Lincoln county, now Gooding county, Idaho; and, beginning with May, 1912, continuously since said date electricity has been furnished for all required purposes of said city and its inhabitants; that the reason for the construction of the transmission line to Boise prior to the construction of any other transmission line was that it was believed the Boise market was the largest and most available at the time; that in August, 1913, the Beaver River Power Company sold and transferred all its interest in the said Malade river development, and all its water rights, transmission lines, and franchises, excepting its franchise in Pocatello, Idaho, to the petitioner, and that the latter is now owner of the said properties; that to the latter company the state engineer of the state of Idaho issued his certificate of final completion under the water-right permit, on the 8th day of March, 1914; that the petitioner proposes to continue development under the said

permit so that prior to the 22d day of February, 1918, it will have a generating plant sufficient to utilize the full amount of water appropriated under the permit, as contemplated by the petitioner and its predecessors in interest; that the markets of Boise and Gooding transmission lines are now extensive enough to justify the building of plants to be used in connection with said works of diversion to develop the full amount of power possible thereunder, and will not justify such construction within several years beyond the time allowed under said permit for the beneficial use of the waters procured thereunder, and that the Boise and Gooding lines are but a part of the lines planned and intended to be used in connection with the Malade river development; that on the 6th day of May, 1913, the village of Shoshone granted a franchise to the Beaver River Power Company to construct pole and wire lines in the streets of said village with which to transmit electrical energy to be furnished said village and its inhabitants; that the latter franchise had been duly transferred to petitioner, the present owner thereof; that prior to the granting of said last-named franchise, and for several months thereafter, the Great Shoshone & Twin Falls Water Power Company, a corporation supplying said village and its inhabitants with electricity, charged rates therefor which were highly exorbitant, and greatly exceeded the rates charged by the petitioner and the Beaver River Power Company in the territory by them supplied; and that the service so furnished by the Great Shoshone & Twin Falls Water Power Company was and still is inadequate and unsatisfactory to the said village and its inhabitants, and that said latter company was and still is unable to fully and adequately supply at reasonable rates the electrical current now needed, and which will be reasonably required in the future by said village and its inhabitants, and that public necessity and convenience require the extension to the said last-named village of the transmission lines of the petitioner, now ending at Gooding, so that the said village of Shoshone can be supplied by the distribution system of the petitioner.

The petition contains allegations that public convenience and necessity, both present and future, demand that applicant be permitted to extend its lines through Twin Falls county and Good-

ing county, and to the cities of Twin Falls and Buhl and the villages of Filer and Wendell, basing such allegations on grounds similar to those given for extending its said lines to Shoshone aforesaid, and alleging that it had obtained franchises from the proper authorities in said counties, cities, and villages, and had already constructed a main electric transmission line from its plant on the Malade river for a distance of $39\frac{1}{2}$ miles south and east to the city of Twin Falls, passing through and contiguous to the city of Buhl and village of Filer, and that said line is now fully constructed, and electricity has been transmitted thereon to the city of Twin Falls and the city of Buhl; that petitioner has expended in its distribution system at Twin Falls the sum of \$25,000, and in its distribution system at Buhl the sum of \$10,000. It charges that prior to petitioner's entry into said cities with its distribution system the Great Shoshone & Twin Falls Water Power Company had been for several years furnishing electrical current to said cities and their inhabitants.

Copies of the ordinances are attached to the petition, from which it is disclosed that the franchise of Shoshone was granted the 6th day of May, 1913, of the city of Twin Falls the 29th day of April, 1913, of Buhl the 30th day of April, 1913, and of Filer the 19th day of May, 1913. The resolution of the board of commissioners of Twin Falls county is not dated, but as there is noted in the proceedings that the board will adjourn until May 16th, 1913, it is a fair presumption that the resolution was adopted either on that date or at some date prior thereto.

The petition has also attached to it a balance sheet showing the assets and liabilities of the petitioner corporation, and has a map also attached, showing the location of petitioner's generating plant and the lines of its distribution system. The petition in all respects seems to comply with the requirements of the rules of practice of the Commission in such cases.

Due notice of the filing of the petition was given to the authorities of the counties, cities, and villages through which and to which the petitioner purposes to extend its line, and also to the Great Shoshone & Twin Falls Water Power Company, the corporation already furnishing electrical current in said fields. The Great Shoshone & Twin Falls Water Power Company failed

to file an answer or cross petition to the petition of the applicant. However, in the original hearing, the Commission and the parties interested considered the material allegations of applicant's petition as denied, and we shall so consider the same in this rehearing.

This proceeding arises under section 48 of the public utilities act, subdivision A, B, and C, reading as follows:

"Sec. 48 (a) No street railroad corporation, gas corporation, electrical corporation, telephone corporation, or water corporation shall henceforth begin the construction of a street railroad, or of a line, plant, or system or of any extension of such street railroad or line, plant, or system, without having first obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such construction; *Provided*, That this section shall not be construed to require any such corporation to secure such certificate for an extension within any city or county or city or town within which it shall have theretofore lawfully commenced operation, or for an extension into territory either within or without a city or county, or city or town, contiguous to its street railroad, or line, plant, or system, and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business; and, *Provided*, further, That if any public utility, in constructing or extending its line, plant, or system shall interfere or be about to interfere with the operation of the line, plant, or system of any other public utility already constructed, the Commission, on complaint of the public utility claiming to be injuriously affected, may, after hearing, make such order and prescribe such terms and conditions for the location of the lines, plants, or systems affected as to it may seem just and reasonable; *Provided*, That power companies may, without such certificate, increase the capacity of existing generating plants or develop new generating plants and market the products thereof.

(b) No public utility of a class specified in subsection (a) hereof shall henceforth exercise any right or privilege, or obtain a franchise or permit to exercise such right or privilege, from a municipality or county, without having first obtained from the

Commission a certificate that public convenience and necessity require the exercise of such right and privilege; *Provided*, That when the Commission shall find, after hearing, that a public utility has heretofore begun actual construction work, and is prosecuting such work in good faith, uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, under any franchise or permit heretofore granted, but not heretofore actually exercised, such public utility may proceed to the completion of such work, and may, after such completion, exercise such right or privilege; and *Provided*, further, That this section shall not be construed to validate any right or privilege now invalid or hereafter becoming invalid under any law of this state, nor impair any vested right in any franchise or permit heretofore granted.

(c) Before any certificate may issue, under this section, a certified copy of its articles of incorporation or charter, if the applicant be a corporation, shall be filed in the office of the Commission. The Commission shall have power, after hearing, involving the financial ability and good faith of the applicant and the necessity of additional service in the community, to issue said certificate, as prayed for, or to refuse to issue the same, or to issue it for the construction of a portion only of the contemplated street railroad, line, plant or system, or extension thereof, or for the partial exercise only of said right or privilege, and may attach to the exercise of the rights granted by said certificate such terms and conditions as in its judgment the public convenience and necessity may require."

The above section of the Idaho public utility law is almost a verbatim copy of the California law.

The law is clear that when we adopt the laws of another state we also adopt that state's interpretation of said law. Our own supreme court in the case of *Stein v. Morrison*, 9 Idaho, 426, 75 Pac. 246, laid down the rule as follows:

"When a statutory or constitutional provision is adopted from another state, where the courts of that state have placed a construction upon the language of such statute or constitution, it is to be presumed that it was taken in view of such judicial interpretation, and with the purpose of adopting the language as

the same had been interpreted and construed by the courts of the state from which it was taken." See also *O'Neill v. Potvin*, 13 Idaho, 721, 93 Pac. 20, 257; *Re Niday*, 15 Idaho, 559, 98 Pac. 845; *Merchants' Protective Assn. v. Jacobsen*, 22 Idaho, 636, 127 Pac. 315.

Having taken our public utility law almost literally from the California law, we are presumed to have adopted also the interpretation theretofore placed upon it by the California Railroad Commission. In the case of *Pacific Gas & Electric Co. v. Great Western Power Co.* 1 Cal. R. C. R. 203, decided June 18, 1912 (this being long before our public utilities law was enacted), at page 209, the Commission said:

"It certainly is true that where a territory is served by a utility which has pioneered in the field, and is rendering efficient and cheap service and is fulfilling adequately the duty which, as a public utility, it owes to the public, and the territory is so generally served that it may be said to have reached the point of saturation as regards the particular commodity in which such utility deals, then certainly the design of the law is that the utility shall be protected within such field; but when any one of these conditions is lacking, the public convenience may often be served by allowing competition to come in. It has been urged in this proceeding that where a utility occupying a field has generally served such field, so that the advent of a second utility would merely serve to divide the business, then if the existing utility has the ability, if it choose to do so, to furnish such territory efficiently and at as reasonable rates as can be legitimately accorded by the utility desiring to enter the field, even though it had theretofore charged excessive rates or given inefficient service, yet sound economy would require the authority which has the power to regulate the rates and service of such utility, to require the existing utility to furnish such territory adequately and cheaply and to keep the second utility out. Theoretically much can be said in favor of this contention, but to attempt to apply it would in practice defeat the very intent of the public utilities act in all cases where utilities did not voluntarily accord to their patrons those things which are their due, or, at least, would impose upon the public authorities the burden of forcing

such utilities into a realization of what their proper relationship to the public is. In times past in this state efforts on the part of the public authorities to force utilities to give reasonable rates and adequate service have been met with long continued litigation, and if the public authorities have at hand an efficient and summary method of forcing public utilities to accord to their patrons such reasonable rates and adequate service, then, in our opinion, it is their duty to use it. If any territory served by an existing utility is afflicted by such utility with excessive rates or inefficient service, and a second utility of the same kind desires to enter such territory, and this Commission should say to the existing utility, 'Although when you had matters your own way you lost sight of your duty to the public, yet we will still preserve for you this territory in consideration of your future good behavior,' in how many instances does anyone suppose a new utility would apply to enter a territory served by an existing utility, when the only effect of all its trouble and expense would be the cheapening of the rate and the improvement of the service of the existing utility? And hence, if we should in the very first important contested application for a certificate of public convenience and necessity announce the rule that where the major portion of a territory is served, though inefficiently and at high rates, the result of such application will be merely to put the existing utility upon its good behavior, then we would, in effect, be saying to all the offending utilities of this state, if there be any, 'You may proceed with your present methods until competition knocks at the door of your territory, and only then will you be compelled to do justice,' and we would be saying to every new public utility, 'You will knock in vain at the door of any field now served by a utility.' The result would be that old utilities would keep their territory unspurred by the fear of competition, knowing always that only when it was imminent need they prepare to do justice to their patrons, and the new utilities, having no incentive to apply for permission to go into territory more or less completely, but inefficiently served, would limit themselves to new fields within which they would soon, in turn, assume the same attitude as would be assumed by the old utilities now doing business within the state. Rather, do we announce the rule that

only until the time of threatened competition shall the existing utility be allowed to put itself in such a position with reference to its patrons that this Commission may find that such patrons are adequately served at reasonable rates. By announcing this principle, we hope we shall hold out to the existing utilities an incentive which will induce them voluntarily, without burdening this Commission or other governmental authorities, to accord to the communities of this state those rates and that service to which they are in justice entitled; and to the new utilities we shall likewise hold out the incentive that on the discovery by them of territory which is not accorded reasonable service and just rates, they may have the privilege of entering therein if they are willing to accord fair treatment to such territory. We understand the certificate of public convenience and necessity to be in this state largely a precautionary measure. We have already dealt somewhat at length with the cases wherein we believe competition should be allowed, even though such competition will mainly serve to take patrons from the existing utility. If, however, a territory is completely served, and the utility has, to the best of its ability, given fair treatment to its patrons, as already intimated, this Commission will be slow to permit a competitor to come into its territory. One of the few cases where, under such circumstances, the competitor will be permitted to enter the field, will be where the competitor can adequately furnish the commodity at a rate so much less than the rate which can be accorded by the existing utility that the interests of the public demand the commodity at the lower rate. We are aware that this may work hardships upon small companies, and we are likewise aware that the state owes a duty to the small utility which has gone into a field and furnished the inhabitants thereof with a service which would otherwise have been denied them. When the advent of the new utility, under such circumstances, will serve, through legitimate competition, to impair the investment of the existing utility, the difference in rates which may be legitimately accorded by the new utility must be so considerable that the public interest clearly demands the rendition of the service at the lower rate before this Commission will be moved to permit the competitor to enter such field, provided always, as

we have already said, that the existing utility, be it small or great, has been doing its best to treat its patrons fairly."

The rule above stated was reaffirmed by the California Commission in the case of *Re Ora Electric Corp.* 2 Cal. R. C. R. at page 756, wherein the Commission said: "This difference, however, exists, in the method of working out this policy as between California on the one hand and these other states on the other: In the other states the commissions have been very much disinclined to permit new utilities to enter a field already served by another utility of like character, even if that utility has not done its duty to the public. In such a case the other commissions largely give to the existing utility its day of repentance, and permit it to meet the improved rates or service of the newcomer, thereby discouraging the development of new enterprises. On the other hand, the California Commission, unless particular circumstances call for a different method of handling the problem, looks to the existing utility as of the day when the newcomer knocks at the door. If the existing utility is at that time found not to be doing its duty to the public, the newcomer is permitted to enter."

And also in the case of *Re Pacific Light & P. Co.* 3 Cal. R. C. R. at page 762, wherein the following language was used: "It is evident, however, that until the Pacific Light & Power Corporation made application to invade this territory, the Newport Beach Electric Light & Power Company had made little, if any, effort to improve its service, and had not in any instance reduced its rates. Therefore, under the rule heretofore laid down by the Commission, that where, upon the application of a corporation to invade territory served by another corporation, the corporation occupying the field was found to be giving poor service at unduly high rates, the application would be granted, and the corporation seeking the privileges would be allowed to come in and compete, this application should be granted."

It is urged that the policy above enunciated, if competition were permitted, would result in the ultimate consolidation of competing companies, after a period of more or less fierce competition, whereafter the consolidated utility claimed the right in the courts to receive from the public rates high enough to yield to the

company a return on all the property of the original competitors, including the property which had been duplicated and a large portion of which had been "junked." This objection is imaginary rather than real. This would be true if "cut-throat" competition were permitted, and typifies the condition of affairs before the enactment of the public utilities law.

In the first place, this Commission is given the right to establish rates of all utilities, and it shall be the policy of this Commission to see that all utilities will be allowed a just compensation of the value of their property used and useful for the public purpose; they cannot continue to expect the public to pay to them rates high enough to yield unreasonably high returns on the property. So that if a new company should be permitted to enter the territory now served by the Great Shoshone Company, competition will exist only as to the kind and character of service to be rendered, and the numerous and divers uses to which electric energy may be applied.

Idaho is a young and growing state, with tremendous possibilities of development, and it seems against public policy that this Commission should take any step that would tend to tie up the unlimited undeveloped water power of this state, and thereby retard the development of our resources. The development of this natural resource, lying at our very doors, should be encouraged so that the people may enjoy the privileges and comforts which are rightfully theirs. Let us quote again from the case of the Pacific Gas & Electric Co. v. Great Western Power Co. *supra*, at page 211 thereof: "Competition does not necessarily become duplication unless the field covered by a natural monopoly is completely served. California has just begun her development. We have no doubt that as a rule in this state the going in of a second utility will develop a considerable amount of new business, while leaving an ample field for the existing utility. Such being the case, the instances wherein this Commission will deny a certificate of public convenience and necessity by reason of the fact that another utility is already in the field will be comparatively rare. If we had as dense a population as exists in some of the eastern states, and if our territory were supporting practically the limit of its population, and practically all the territory of

this state were covered by the plants of existing utilities, then, under the rule we have already announced, practically the only cases wherein a second utility would be permitted to compete would be those cases wherein the present utility was remiss in its duty to the public. But the fact that a power line, for instance, crosses a county, and in the immediate vicinity of its line is distributing electricity for power and light purposes, certainly could not lead us to conclude that the entire territory of such county was completely occupied by the existing utility. Many thousands of horse power of hydro-electric energy are now being developed, and we have no doubt that the rapidly increasing population and the expansion of enterprise within this state will develop a market which will keep pace with the increase of the supply of this commodity."

If the reasons above specified are sound when applied to the state of California, they are certainly sound when applied to the developmental conditions of Idaho. We therefore conclude that the California rule as herein enunciated is the only rational rule for this Commission to adopt. Having adopted a rule in this matter, we must next make the proper application of the facts in this case, and determine if they fall within said rule. There are three questions which present themselves for consideration, *viz.*:

(1) Was the Great Shoshone & Twin Falls Water Power Company rendering adequate service in the field in question at the time of the threatened competition by the applicant herein?

(2) If the service was adequate, were the rates reasonable?

(3) Was and is the territory in question completely served by the Great Shoshone & Twin Falls Water Power Company?

The evidence shows that the present developed capacity of all the plants of the Great Shoshone Company is about 6,050 H. P., with an estimated future capacity of something like 33,000 H. P. This does not include about 2,900 H. P. leased from the Thousand Springs Company and used by the Great Shoshone Company; that the estimated peak load of the company now is something like 7,900 H. P., leaving only 750 H. P. as a reserve; and this was considered necessary in the operation of a plant of that capacity to properly guard against contin-

gencies. So that to take on any more load it would be necessary for the company to add an additional unit or more. It also appears from the evidence that the company is now in the hands of a receiver, and it is contended by the applicant herein that the Great Shoshone Company is insolvent and unable to raise more money with which to increase the capacity of its plant. This question was touched upon very lightly in the evidence. Mr. Wallace, the receiver, explained why the application for receivership was made. We shall, for the purposes of this hearing, consider the Great Shoshone Company as a solvent, going concern, as we prefer to base our decision upon broader grounds.

It is also urged that the service rendered by the Great Shoshone Company was not satisfactory. A great number of witnesses were called at Shoshone, Buhl, Filer, and Twin Falls on this phase of the case, but we are satisfied from the evidence that the company was giving reasonably good service, except for heating purposes. We believe, from an economic standpoint, that electricity is too expensive to be used for heating purposes. The evidence shows that the only reason why it is used for heating at all is that during the summer months the company used quite a large amount of power for pumping for irrigation purposes in the immediate vicinity, and that this surplus is used in the winter, when not used for pumping purposes, for heating purposes. The testimony of Mr. Nunn, touching this subject, is as follows:

"No community can afford long to use electric power for heating, for the reason that whatever may be the cost of developing by water power, there is not water power in the country to supply the demands for power, so the development of energy by steam must become a standard. Now in using coal for steam, we develop electric energy with an efficiency of 6, 8, or 10 per cent. To turn it back into heat it is being used in competition with heating at an efficiency of 50 or 60 per cent. As a community's use for electricity for the ordinary purposes encroaches upon the surplus of the company, the heating use of electricity must retreat until finally, after the ordinary uses have encroached entirely and absorbed entirely the capacity of the plant, the heating has disappeared, and given place to the higher uses of electricity. There are many uses, both in town and on the farm,

which do not now involve the use of power, but for which power will soon be used to great advantage. One thing is certain, in the solution of this great economic question, it will be found that in a community like this it will not pay to use oil and coal for the pulling of freight trains while we are using the power from water power for electric heating. It will pay better to use the electric power for the railroad, and burn the coal or oil for heating."

We shall therefore conclude that the Great Shoshone Company was and is in a position to render reasonably good service to the citizens of the communities in question.

We now come to the second proposition, and that is, Were the rates charged by the Great Shoshone Company in the territory in question reasonable at the time the applicant company threatened to enter this territory? The evidence shows that on or about March 1st, 1908, the company adopted the following schedule of rates, to wit:

Less than 25 kilowatt hours per month	15¢ per k.w.h.
Exceeding 25 kilowatt hours per month and less than 40 ..	14¢ " "
Exceeding 40 kilowatt hours per month and less than 60 ..	13¢ " "
Exceeding 60 kilowatt hours per month and less than 150	12¢ " "
Exceeding 150 kilowatt hours per month and less than 250	11¢ " "
Exceeding 250 kilowatt hours per month and less than 625	10¢ " "
Exceeding 625 kilowatt hours per month and less than 1,000	9¢ " "
Exceeding 1,000 kilowatt hours per month	8¢ " "
Minimum lighting rate, per month	1.00
To those customers burning their connected load 5 hours per day for 30 days a month	9¢ " "
To those customers burning their connected load 10 hours a day for 30 days a month	7¢ " "
Electric signs, minimum charge per month	\$5.00

The above schedule of rates applied to the city of Shoshone, the city of Twin Falls, and the villages of Filer and Buhl. These rates remained in effect until January 2d, 1913, when they were voluntarily reduced by the company as follows:

Residence and Commercial Lighting.					
The first	50 kwh.	at 12 cents	per kwh.		
The next	50	" at 10	" " "		
The next	100	" at 8	" " "		
The next	1000	" at 7	" " "		
The next	4000	" at 6	" " "		
Above	5200	" at 5	" " "		

Minimum charge, \$1.00 per month.

A discount of one cent per kwh. is allowable on all residence and commercial lighting bills, providing all bills due the company for all classes of service are paid on or before the tenth of the month following that in which service is rendered. No bill, however, will be discounted below \$1.00.

On October 14, 1913, a complaint was filed with this Commission by the village of Wendell against the Great Shoshone Company, charging discrimination by the said company in rates at Mountain Home, Glenns Ferry, and Gooding, as against Wendell and the other southern Idaho towns and cities served by said company. An informal hearing was had, and the Great Shoshone Company consented to and acquiesced in the present rate, which was formally ordered reduced by this Commission on the 23d day of February, 1914, as follows:

To cover all charges for service rendered for lighting and power in all cities and villages and rural districts wherein the company is now doing business, except the towns of Gooding, Glenns Ferry, and Mountain Home.

Residence Lighting.

9	cents	per	kilowatt	hour	for	first	20	kilowatt	hours.
6 $\frac{1}{2}$	"	"	"	"	"	"	next	20	"
5 $\frac{1}{2}$	"	"	"	"	"	"	"	20	"
4	"	"	"	"	"	"	"	40	"
3	"	"	"	"	"	"	all additional	"	"

The above rates for residence lighting are subject to a discount of 10 per cent if paid on or before the 10th of the month.

Minimum bill 70 cents for 9 kilowatt hours or less, if bill is paid on or before the 10th of the month succeeding that in which service is rendered; otherwise, the minimum charge will be \$1.00 per month.

Commercial Lighting.

7 $\frac{1}{2}$	cents	per	kilowatt	hour	for	first	50	kilowatt	hours.
6	"	"	"	"	"	"	next	50	"
4 $\frac{1}{2}$	"	"	"	"	"	"	"	100	"
3 $\frac{3}{4}$	"	"	"	"	"	"	"	300	"
3	"	"	"	"	"	"	"	500	"
2 $\frac{3}{4}$	"	"	"	"	"	"	"	1000	"
2 $\frac{1}{4}$	"	"	"	"	"	"	"	1000	"
2	"	"	"	"	"	"	all additional	"	"

The above rates for commercial lighting are subject to a discount of 10 per cent if paid on or before the 10th of the month.

Afterwards, to wit, April 9, 1914, a general order of this Commission was issued, establishing uniform rates for all territory east of Boise as shown in the following schedule:

Residence and Commercial Lighting.

9¢ per kwh. for first	20 kwh. per month
8¢ " " " next	30 " " "
7¢ " " " "	40 " " "
6¢ " " " "	50 " " "
5¢ " " " "	100 " " "
4¢ " " " "	200 " " "
3¢ " " " "	500 " " "
2¢ " " " all over 940	" " "

Minimum charge \$1.00 per month.

A discount of 10 per cent is allowed on all monthly bills if paid on or before the 10th of the month following that in which service is rendered.

We must assume that this last schedule of rates is reasonable, otherwise the companies would not have consented to the same.

The record shows that in the spring of 1912 the applicant herein, or rather its predecessor in interest, constructed a transmission line from its station to Boise, and also a transmission line to Gooding, together with distribution lines in the city of Boise and the villages of Gooding, Mountain Home, and Glenns Ferry, and supplied electrical energy for light and power purposes in said communities from and after about May 1st, 1912, and that the schedule of rates so established ranged from a maximum of 9 cents downward. The Great Shoshone Company reduced its rates to the same basis in this competitive territory. It also appears from the record that the applicant herein is ready and willing to furnish power for lighting purposes in the territory in question at a rate not exceeding a maximum of 9 cents per K.W.H.; although the maximum fixed in the ordinances of the several cities, towns, and villages in question was 11 cents per K.W.H. This territory was threatened by the applicant herein as early as 1912, active steps being taken to secure the necessary franchises from the various cities, towns, and villages in the early part of 1913. This shows a reduction from a maximum of 15 cents in January, 1913, to a maximum of 9 cents at the present time. We therefore must conclude that the Great Shoshone Company at the time the territory in question was threatened with competition was not furnishing electrical energy to the inhabitants of the various cities, towns, and villages in said territory at reasonable rates.

We next come to the third proposition. Was and is the territory in question completely served by the Great Shoshone Company? The record shows that the Great Shoshone has constructed 96.87 miles of rural distribution lines, scattered over six counties, and radiating out from eighteen different cities, towns, and villages as distributing centers. From those facts we can hardly conclude that the entire territory of those six counties was completely occupied by the Great Shoshone Company. The California Commission in the case of the Pacific Gas & Electric Co. v. Great Western Power Co. 1 Cal. R. C. R., page 212, said: "But the fact that a power line, for instance, crosses a county, and in the immediate vicinity of its line is distributing electricity for power and light purposes, certainly could not lead us to conclude that the entire territory of such county was completely occupied by the existing utility."

Another question urged by the applicant was that the Idaho Power & Light Company can furnish power more cheaply than the Great Shoshone Company, by reason of its smaller investment. Evidence was introduced showing the property cost of the Shoshone Company to be something like \$4,217,203.84, while that of the Idaho Power & Light Company was \$2,192,009.20. These figures were compiled from the annual reports of the companies filed with this Commission. This matter of values or cost was very lightly touched upon, and we can hardly give very much weight to the same. We would hesitate considerably before accepting the same as final in a rate-making contest. We are satisfied from the evidence introduced, however, that the Idaho Power & Light Company can furnish power as cheaply if not more cheaply than the Great Shoshone Company, and that is as far as we care to discuss the matter in this case.

We do not wish to be understood as holding, or intending to hold, that the door of competition will be thrown wide open in this state; but unless it is shown that the utility desiring to enter a competitive field can give such service as will be a positive and material advantage to the public, it will not be allowed to enter a field already occupied; provided always, that the existing utility is furnishing the public in its territory with adequate service at

reasonable rates at the time of the threatened competition. Each case must be decided upon its own particular merits.

With the findings above set forth and the views herein expressed, the conclusion which must follow is that the order heretofore entered in this case on the original hearing, being order No. 169, should be vacated, and set aside, and that the application of the Idaho Power & Light Company for a certificate of convenience and necessity be granted.

It is therefore ordered that order No. 169, being the order of this Commission made and entered in this case at the original hearing, be, and the same hereby is, vacated and set aside.

It is further ordered that there be granted, and there is hereby granted, to the said applicant the certificate as applied for in the territory covered in the application.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Public Utilities Commission of the state of Idaho.

A. P. Ramstead, John W. Graham, Commissioners.

Note.—The Idaho Commission in the foregoing case has adopted the rule of the California Commission in regard to the admission of competitive utilities in a field already occupied, where the rates or service of the existing companies have not been satisfactory. This rule is thus briefly stated by the California Commission: "Only until the time of threatened competition shall the existing utility be allowed to put itself in such a position with reference to its patrons that this Commission may find that such patrons are adequately served at reasonable rates." *Pacific Gas & Electric Co. v. Great Western Power Co.* 1 Cal. R. C. R. 203. See also *Re Pacific Light & P. Co.* 3 Cal. R. C. R. 762.

In *Re Oro Electric Corp.* 2 Cal. R. C. R. 756, the Commission said: "While this policy may result in the duplication of properties in some few cases, the general effect thereof will be extremely salutary for the reason, first, that the existing utilities will be put on their good behavior all the time, and not merely when they are expecting competition, and, secondly, that persons proposing to invest their money in public utilities in California may know, if they find territory in which there is no such public utility, or territory which is being served but in which the existing utility is not doing its duty to the public, this Commission will permit the new utility to proceed. In this way, persons proposing to further develop the state of Cali-

fornia by means of new utilities are encouraged to proceed. In other words, the policy of most of the other states amounts to throwing cold water on the development of new public utilities, while in California such development is encouraged in proper cases."

The California Commission has also held that, although to some extent the reasonableness of the rates of an existing company must be considered upon an application for certificate of public convenience and necessity, nevertheless it would not determine finally the question of reasonableness of rates *per se* in an application for such a certificate by a competing company. *Mt. Whitney Power & Electric Co. v. Tulare County Power Co. & San Joaquin L. & P. Co.* 1 Cal. R. C. R. 285.

But even in California it has been held that a public utility established in a territory, and giving good and adequate service at reasonable rates voluntarily given to all who apply, and not made merely to forestall prospective competition, is entitled to protection, such protection being as much in the interest of the public as of the utility. *Re Half Moon Bay Light & P. Co.* 1 Cal. R. C. R. 381.

So the Idaho Commission has refused to grant a certificate of public convenience where it appeared that the main purpose of the applicant was to obtain business by destroying the existing company. *Re Swan Creek Electric Co.* 3 Public Service Regulation, 15.

As has been pointed out by both California and Idaho Commissions, a different rule as to the admission of competition prevails in the eastern states, where the field is more fully occupied.

Thus it has been said that a long-established legislative policy of Massachusetts is that the public interest is better served by public supervision and regulation than by competition, so long as the existing utility is adequately and properly performing its public duty. *Re Clinton*, 27 Mass. G. & E. L. C. R. 39.

Other decisions of the Massachusetts Commission illustrating the same point of view are *Re Northampton Electric Lighting Co.* 7 Mass. G. & E. L. C. R. 18; *Re Worcester Electric Light Co.* 9 Mass. G. & E. L. C. R. 20, 12 Mass. G. & E. L. C. R. 22; *Great Barrington Appeal*, 10 Mass. G. & E. L. C. R. 18; *Rockport Appeal*, 11 Mass. G. & E. L. C. R. 8; *Re East Hampton*, 23 Mass. G. & E. L. C. R. 28; *Re Worcester*, 27 Mass. G. & E. L. C. R. 32; *Re Haverhill*, 23 Mass. G. & E. L. C. R. 20.

The supreme court of Massachusetts has taken the same view. *Weld v. Gas & Electric Light Comrs.* 197 Mass. 556, 84 N. E. 101, citing *Atty. Gen. ex rel. Gas & E. L. Comrs. v. Walworth Light & P. Co.* 157 Mass. 86, 16 L.R.A. 398, 31 N. E. 482.

But permission to enter a field already occupied by an electric light company capable of supplying small consumers to advantage, but not large consumers, was granted to a company which was capable of sup-

plying large consumers to advantage, but not small consumers. *Re Fitchburg*, 25 Mass. G. & E. L. C. R. 43.

The Illinois Commission has denied an application for a certificate of convenience to a telephone company, where the existing company was already furnishing adequate service at reasonable rates. *Macon County Teleph. Co. v. Bethany Mut. Tele. Co.* 3 Public Service Regulation, 147.

And in *Re Buffalo, R. & E. R. Co.* 1 P. S. C. R. (2d D. N. Y.) 532, an application for a certificate of public convenience and necessity for the construction of a through railroad paralleling the line of the New York Central throughout the state of New York, the Commission took a decided stand against the issuance of such certificate, where the evidence was not satisfactory that the existing company could not handle all of the business, either with the existing facilities or as they could be reasonably developed.

But if an existing concern is serving the public in an unsatisfactory manner, it is entitled to little consideration when it seeks to exclude competition. *Re Katonah Lighting Co.* 1 P. S. C. R. (2d D. N. Y.) 46. To the same effect *Re Manhattan Bridge Service Co.* 3 P. S. C. R. (1st D. N. Y.) 92.

The Michigan Commission granted a certificate of convenience to a telephone company permitting it to extend its lines paralleling along a certain highway the line of a competing corporation, on the ground that the latter corporation refused to permit physical connection between the competing company's line and its own. *Re United Home Teleph. Co.* 3 Public Service Regulation, 150.

That the existence of a competing company might impair the securities of the existing company has been said not to be a controlling factor in determining whether or not permission will be given to the competing company to enter the field. *Re California & Michigan Land & Water Co.* 2 Public Service Regulation, 71; *Re Rochester Corning Elmira Traction Co.* 1 P. S. C. R. (2d D. N. Y.) 166. See also *Re Niagara Falls Lighting Co.* 2 P. S. C. R. (2d D. N. Y.) 116.

The California Commission has held that the mere shading of the rates of the existing company is not sufficient to authorize it to grant permission to a new company to enter the field. *Re Oro Electric Corp.* (1913) Cal. R. C. R. Decision, 616. The same position has been taken by the Commission in the Second New York District, in *Re Oswego Power Transmission Co.* decided in 1912.

So the New Hampshire Commission has taken the position that the mere shading of rates is not sufficient. *Parker v. Hudson Water Co.* 3 Public Service Regulation, 14.

If the existing company is not actually supplying the territory to be served, and has no actual investment of appreciable nature there-

in, it cannot claim that the territory belongs to it. *Re Islip Electric Light Co.* 2 P. S. C. R. (2d D. N. Y.) 415; *Re Oro Electric Corporation Transmission Line*, 1 Cal. R. C. R. 253.

So the mere fact that the existing company intends to extend its vista into a territory for which a new company desires a franchise is not a sufficient ground for withholding the consent of the Commission. *Re Patchogue Electric Light Co.* 3 P. S. C. R. (2d D. N. Y.) 254.

Where a public utility desires to enter an unoccupied field, it has been said that the Commission will withhold approval unless it is shown that the service is needed. *Re Eastern Teleph. & Teleg. Co.* N. J. P. U. C. R. May 19th, 1913.

And the company must also show that it is able to render the service. *Re Oro Electric Corporation Transmission Lines*, 1 Cal. R. C. R. 253.

And that it has sufficient financial ability to carry out the project. *Re Buffalo, R. & E. R. Co.* 1 P. S. C. R. (2d D. N. Y.) 532.

In California an applicant does not require a certificate of public convenience and necessity as to territory not occupied by any other utility. *Re Dunn*, 1 Cal. R. C. R. 447.

ILLINOIS STATE PUBLIC UTILITIES COMMISSION. .

IN RE APPLICATION OF THE TAMPICO FARMERS MUTUAL TELEPHONE COMPANY.

[No. 2933.]

Rates — Discrimination — Stockholders — Increase to eliminate.

An increase in telephone rates will be allowed to eliminate discrimination in favor of stockholders, such discrimination being forbidden by conference ruling No. 8, of the Illinois Public Utilities Commission.

Rates — Discrimination — Owners of equipment — Increase to eliminate.

An increase in telephone rates will be allowed, to eliminate discrimination in favor of the owners of telephones, such discrimination being forbidden by conference ruling No. 15 of the Illinois Public Utilities Commission, which fixes an annual rental of \$1.60 to be paid by the company to such owners.

Rate — Discrimination — Free service — Public officers.

All free and reduced rate telephone service to public officers, and officers in the various municipalities, is forbidden by conference ruling No. 13 of the Illinois Public Utilities Commission.

Rates — Discrimination — Free service — Prior law.

It is not the general policy of the Illinois Public Utilities Commission to inquire, of its own initiative, into the reasonableness of a contract for service between municipalities and telephone companies, entered into prior to the taking effect of the act creating the Commission.

Rates — Discrimination — Free service — Railroad company.

Where telephone service in railway stations may be reasonably required under the provision of section 49 of the Illinois Public Utilities Law, railway companies should pay the regular business rate for such service.

Rates — Discrimination — Combination rate.

A combined business and residence telephone rate which is less than the sum of the regularly published residence and business rates is forbidden by the Illinois Public Utilities Commission.

Rates — Removing telephones.

A charge may be made for removing telephones from one address to another after the first installation and prior to the expiration of the term of the subscription or contract for service, provided that the amount of this charge shall be as nearly as possible the actual cost of performing the work.

[January 7, 1915.]

APPLICATION for authority to change rates: granted in part.

By the Commission: This is an application for authority to discontinue discriminatory rates and charges as applied to subscribers who are stockholders and to subscribers who are not stockholders; also to subscribers who own their telephones.

Application sets forth that the rates of the petitioner now in force and effect are as follows:

Classification.	Rates.
Stockholders' telephones	\$ 5.00 per year.
Stockholders' telephones—business and residence (combination rate)	7.50 “ “
Nonstockholders where company furnishes the telephone ...	15.00 “ “
Nonstockholders who furnish their own telephones	10.00 “ “

Application further sets forth that the utility is furnishing one telephone to the Chicago, Burlington, & Quincy Railroad Company, two telephones to the village of Tampico, and two telephones to the city of Rock Falls, free.

Application is made for authority to establish the following schedule of rates:

Classification.	Rates.
Business telephones—individual lines	\$15.00 per year.
Residence telephones—individual lines	15.00 “ “
Residence telephones—party lines	12.00 “ “
Business and residence—two telephones on same line (combination rate)	22.00 “ “
Switching charge for rural service stations	8.00 “ “

Two telephones furnished to the village of Tampico without charge.

Two telephones furnished to the city of Rock Falls without charge.

Tolls for nonsubscribers over local lines, 5 cents; between two exchanges, 10 cents.

To all subscribers who furnish their own telephones, a rental of \$2 per year for each telephone will be paid to such subscribers by the Tampico Farmers Mutual Telephone Company; subscribers classed as rural service stations excepted.

For changing telephones from one address to another, special wiring, etc., subscribers to be charged the actual cost of making such changes.

Hearing was held in this case at Chicago, Illinois, December 9, 1914. John H. Daly, secretary of the Tampico Farmers Mutual Telephone Company, appeared for the petitioner. No one appeared objecting.

From the testimony presented at the hearing it appeared that the proposed changes in rates are for the purpose of discontinuing discriminations. It further appeared that the stockholders and some of the “renters” own their telephones, and that by reason of this the petitioner proposes to pay such subscribers a rental of \$2 per year for the use of such telephones.

Conference ruling No. 8, and other decisions heretofore made by this Commission, provide that a stockholder cannot be given any greater or less or different rate than the rate charged other subscribers. Conference ruling No. 15 provides that it is unlawful to grant any reduction from the regular rate on account of subscribers owning their telephones, and fixes the annual rental rate to be paid by the telephone company to the subscriber who owns his telephone at \$1.60.

“In the matter of Rates, Rules and Classifications of Tele-

phone Service in Illinois," conference ruling No. 13, the Commission ruled:

"a. All free and reduced rate service is prohibited by the act providing for the regulation of public utilities. . . .

"It follows of course, that all free and reduced rate service now given to public officers and officers in the various municipalities is prohibited by the above, but it will not be the general policy of the Commission, on its own initiative, to inquire into the reasonableness of the terms and conditions of ordinances providing for compensation to municipalities in the way of telephone service, where the terms have been agreed upon between the municipalities of the state and the public utilities, prior to the taking effect of the act creating this Commission."

"c. Where telephone service in railway stations may be reasonably required under provisions of section 49 of the State Public Utilities Law, railway companies should pay the regular business rate for such service. In railway stations at which the railway company cannot reasonably be expected to pay for the telephone, or where it already pays for one or more telephones, telephone companies may be permitted, if they so desire, to place a pay station telephone equipped with a coin collector. Under these conditions, all subscribers of the telephone company in question, can have communication with the railway station without additional charge, but messages sent from the station to the subscriber must be paid for."

"f. Every telephone company which offers business and residence rates should publish a separate and distinct rate for business telephones and for residence telephones; and a so-called combined rate for a business telephone and a residence telephone, which is less than the sum of the regularly published residence and business rates, is unlawful.

"1. A charge may be made for removing telephones from one address to another after the first installation and prior to the expiration of the term of the subscription or contract for service,

provided that the amount of this charge shall be as nearly as possible the actual cost of performing the work."

It further appeared that the proposed schedule does not involve any increase in rates that the petitioner now has in force and effect, and that all discriminations can be discontinued by the utility conforming its rates, rules, and classifications to the provisions of conference ruling Nos. 8, 13, and 15.

It is therefore ordered, that the petitioner, the Tampico Farmers Mutual Telephone Company, shall discontinue all discriminatory rates and charges as set forth in the application, and establish the following schedule of rates and charges:

Classifications.	Rates.
Business telephones—individual lines	\$15.00 per year.
Residence telephones—individual lines	15.00 " "
Residence telephones—party lines	12.00 " "
Switching charge for service stations	8.00 " "

It is further ordered that the rates and charges herein authorized shall become effective as of January 1, 1915, and shall be filed, posted, and published as provided by section 34 of an act entitled "An Act to Provide for the Regulation of Public Utilities."

By order of the Commission this 7th day of January, 1915, dated at Springfield, Illinois.

Note.—The Wisconsin public utilities law expressly prohibits a utility from charging a consumer who owns his equipment, or any portion thereof, a lower rate than that paid by consumers who do not own such equipment, but provides that, in case a consumer owns his equipment, the utility may pay him a reasonable rental for its use. In *re Janesville v. Janesville Water Co.* 7 Wis. R. C. R. 628, 637 (1911).

Wisconsin consumers who do not own their meters cannot be charged a minimum rate, while those who own them are exempted therefrom. The Commission said: "It is the duty of the utility to furnish meters, and no distinction, as far as rates or minimum charges are concerned, can be made between consumers who own their meters and those whose meters are owned by the utility." *Re Bruce Water & Light Co.* 9 Wis. R. C. R. 474, 476 (1912).

As to an increase in rates to eliminate discrimination in favor of stockholders, see *Re Application of the Montrose Mutual Telephone Co.* (Illinois) *post*, 33.

ILLINOIS PUBLIC UTILITIES COMMISSION.

IN RE APPLICATION OF THE ABINGDON HOME
TELEPHONE COMPANY.

[No. 2324.]

Rates — Telephone — Discrimination — Free service — Franchise provisions.

Under a prior ruling of the Commission, that franchise provisions for the furnishing of free service to a municipality shall be observed by the public utility until otherwise ordered, and that the right to disregard such franchise provisions in any consideration and determination of the utility's rates and charges shall be reserved, free telephone service to the city was ordered discontinued.

Rates — Telephone — Discount for prompt payment rule — Approval of.

The following rule of a telephone company, that "bills for rental service are payable monthly at the office of the company, on or before the 15th day of the month in which the service is rendered, except that bills for rural exchange service, other than rural switching, may be paid quarterly on or before the 15th day of the second month of the quarter in which the service is rendered, and if so paid a deduction of 25 cents per month will be made,"—is approved as appearing to be reasonable and just.

[January 7, 1915.]

APPLICATION for approval of rates; granted.

By the **Commission**: The petition in this case shows that on April 1, 1913, the Abingdon Home Telephone Company purchased the plant, equipment, and ordinance rights of the Mutual Union Telephone Company, of Abingdon, Illinois; that at the time of said purchase the said plant of the Mutual Union Telephone Company was inefficient, and inadequate to properly supply the needs of the community; that immediately following the purchase of said plant the petitioner caused to be constructed a new and modern telephone plant, including a new switchboard, which the petitioner installed in a new brick building owned by the telephone company; that during the period of reconstruction of petitioner's plant it continued to operate the old exchange; and

that on July 1, 1913, the schedule of rates for the old service was as follows:

Rates.	
Business telephones	\$1.00 to \$1.75 per month.
Depending upon extent of the service.	
Residence telephone	\$1.00 to \$1.50 per month.
Depending upon extent of the service.	
Rural telephones	\$1.00 to \$1.25 per month.
Depending upon extent of the service.	

The petitioner further shows that the reconstruction of said plant was completed in November, 1913, and that on December 1, 1913, the petitioner put into effect a new classification and schedule of rates. Also the following rule with respect to payments and discounts, viz:

"Bills for rental service are payable monthly at the office of the company, on or before the 15th day of the month in which the service is rendered, except that bills for rural exchange service, other than rural switching, may be paid quarterly on or before the 15th day of the second month of the quarter in which the service is rendered, and if so paid a deduction of 25 cents per month will be made."

The Commission is asked to approve said new classification and schedule of rates, as set forth in the application; also to approve the above rule of the petitioner with respect to payments and discounts.

The Commission, having heard the testimony on the hearing and rehearing, and being fully advised in the premises, finds that under the facts and circumstances in this case, the following rates and charges appear to be just and reasonable.

Rates.	
Private line business telephones	\$2.00 per month
Party line business telephones	1.50 " "
Private line residence telephones	1.50 " "
Party line residence telephones	1.25 " "
Churches, hospitals, and other charitable institutions	1.50 " "
Extension telephones	.50 " "
Extension bells	.15 " "
Party line rural telephones (on metallic circuit)	1.50 " "
Telephones in residence of such employees as the company must reach in order to provide adequate service	.75 " "
Listing extra name in directory	.50 " "
Rural switching for subscribers owning their own lines and telephones	.25 " "

The Commission further finds that the franchise which was granted to the predecessor of the petitioner by the city of Abingdon, and under the terms, requirements, and provisions of which the petitioner is now operating, provides that the telephone company shall furnish free telephones, not exceeding four in number, to the city of Abingdon, and that the petitioner has been furnishing four free telephones to said city in compliance with the franchise provision. This Commission, in conference ruling No. 14, said:

"Where any public utility doing business in this state is required by the terms of any franchise ordinance, granted to it by a municipality to furnish service to such municipality in consideration of its franchise, such public utility shall observe such franchise requirement until otherwise ordered by this Commission. This Commission reserves the right to inquire into the reasonableness and sufficiency of any such franchise requirement and to disregard the same whenever the rates and charges of any such public utility shall be hereafter considered and determined by this Commission."

Inasmuch as the Commission has been called upon, and has considered and determined the rates of petitioner, in this case, it follows that the time has now arrived to pass upon the reasonableness of the franchise provision above mentioned.

This Commission has already decided, in several cases presented to it, that it is not bound by the provisions of franchise ordinances, in so far as such ordinances attempt to fix rates; that the power to determine just and reasonable rates has been vested, by the State Public Utilities Commission law, in this Commission.

After a careful consideration of the matter, the Commission is of the opinion that the petitioner should discontinue the furnishing of free telephone service to said city of Abingdon.

The Commission further finds that the above-mentioned rule with respect to payments and discounts appears to be reasonable and just, under the facts in this case.

It is therefore ordered that the classification and schedule of

rates of the petitioner, as shown in the above-mentioned schedule, be and the same hereby are approved.

It is further ordered that the petitioner discontinue the furnishing of free telephones to the city of Abingdon, and that it shall hereafter charge said city the regular schedule rate for the class of service furnished.

It is further ordered that the above schedule of rates and charges shall be filed with this Commission, and shall be published, as provided by law, and shall become effective from and after the 30th day of September, 1914.

By order of the Commission, this 7th day of January, 1915, dated at Springfield, Illinois.

Note.—In *Plainfield v. Public Service Electric Co. N. J. P. U. C. R. 3 Public Service Regulation, 215 (1914)*, it was held that a contract by which the corporation agreed to light the public buildings of the municipality without charge, as a condition for receiving its franchise, was not void on the theory of unjust discrimination. The Commission said: "When a public utility bargains with a municipality for rights of entry and occupancy of the public street, the public utility acts in a unique capacity; in such capacity it may assume obligations to make a return for such franchise privileges as it seeks, and may express such obligations in terms of money, or of service. It may in such capacity lawfully undertake to pave the streets traversed by its cars. It may in such capacity undertake to pay the municipality in money a certain portion of its receipts. It may in such capacity undertake to afford a stipulated amount of free service, such as free lighting or free telephone service for municipal buildings. The essential thing is that the obligations so undertaken, even though expressed in terms of service to be rendered without money payment, is one assumed by the public utility as a bargainer with a body politic, not as a duly deputized and enfranchised agency required to afford service to the generality of consumers without undue or unjust discrimination. It is one thing to promise service without charge when the utility bargains with a body politic for a franchise; it is a radically different thing for a utility duly enfranchised to sell service to the public generally. In the one case the utility buys particular privileges from a particular body politic; in the other case, the utility sells services to consumers generally. In the one case it buys a franchise; in the other it sells a service."

ILLINOIS STATE PUBLIC UTILITIES COMMISSION.

IN RE APPLICATION OF THE MONTROSE MUTUAL
TELEPHONE COMPANY.

[No. 2979.]

Rates — Discrimination — Stockholders — Increase to eliminate.

An increase in telephone rates will be allowed, to eliminate discrimination in favor of stockholders.

[January 7, 1915.]

APPLICATION for authority to change rates; granted.

By the **Commission**: Application in the above-entitled matter sets forth that the petitioner is a public utility engaged in the management and operation of a telephone system consisting of local exchanges and connecting rural lines in Effingham and Jasper counties, Illinois, with its principal place of business at Montrose, Illinois, and that as such public utility it is subject to the provisions of an act entitled, "An Act to Provide for the Regulation of Public Utilities."

Application further sets forth that the rates of the petitioner now in force and effect are as follows:

Stockholders' telephones	\$ 9.00 per year.
Rented telephones	12.00 " "

Application is made for authority to change the rate charged stockholders, in order to discontinue the difference or discrimination in rates as applied to subscribers who are stockholders and to subscribers who are not stockholders, and to charge a rate of \$12 per year to all subscribers without discrimination; also to change certain toll rates now in force and effect as shown by the following table:

From	To	Present Rate.	Proposed Rate.
Montrose	Wheeler	15c	20c
"	Newton	15c	20c
"	Rose Hill	15c	20c
"	Elliottstown	15c	20c
"	Watson	20c	15c

On account of the proposed changes in toll rates this case was set for hearing at Springfield, Illinois, December 29, 1914. In answer to the notice of date of hearing, the petitioner notified
P. U. R.—3.

the Commission that the proposed changes in rates would not produce sufficient revenue to warrant the petitioner incurring the necessary expense of being represented before the Commission, either in person or by counsel, and asked leave to withdraw that part of the petition pertaining to the proposed changes in toll rates. The request of the petitioner in this respect was granted by the Commission, thus obviating the necessity for a formal hearing, the showing in the application being considered sufficient to warrant the Commission in issuing an order in this case.

Conference ruling No. 8, and other decisions heretofore made by this Commission, provide that a stockholder cannot be given any greater or less or different rate than the rate charged other subscribers.

It is therefore ordered, that the discriminatory rates and charges as set forth in the application of the petitioner, Montrose Mutual Telephone Company, shall be discontinued and the rate of \$12 per year, which is the rate now charged subscribers classified as "renters," shall be substituted in lieu thereof, such rate to apply to all subscribers without discrimination.

It is further ordered that the rate herein authorized shall become effective as of January 1, 1915, and shall be filed, posted, and published as provided by section 34 of an act entitled, "An Act to Provide for the Regulation of Public Utilities."

By order of the Commission this 7th day of January, 1915, dated at Springfield, Illinois.

Note.—The same ruling was made by the Commission on a similar state of facts in the following cases: Re Farmers Mutual Telephone Co., No. 2931, January 7, 1915, and Re Pulaski Telephone Co., No. 3055, January 7, 1915.

ILLINOIS STATE PUBLIC UTILITIES COMMISSION.

IN RE APPLICATION OF THE COMMERCIAL TELEPHONE AND TELEGRAPH COMPANY.

[No. 2501.]

Rates — Advances to eliminate discrimination.

Authority was granted to a telephone company to change and increase certain of its rates and charges for the purpose of eliminating

discriminations and establishing a uniform schedule of rates where the evidence for the company tended to show that the rates sought to be established were reasonable and no objection was made by patrons or municipal authorities to the proposed changes.

Rates — New classification and schedules.

In the absence of any complaint as to the reasonableness of proposed new classifications and rates of a telephone company, involving no increases in charges they will become effective in Illinois thirty days after a schedule of the same shall have been filed with the Commission and posted and published in accordance with the terms of the public utilities law.

[January 7, 1915.]

APPLICATION for authority to change rates at Grayville, Illinois; granted.

By the **Commission**: The application in this case sets forth that the petitioner is a public utility subject to the jurisdiction of this Commission, and that it is engaged in the management and operation of a telephone system and exchange at Grayville, Illinois. The petitioner asks for authority to change certain of its rates and charges, so as to eliminate certain discriminations and to establish a uniform schedule of rates, over its entire system.

The rates which petitioner asks for authority to increase are as follows:

Individual Grounded Line Business telephones, from \$1.75 to \$2.00 per month.

Switching farmers' lines, minimum of Six (6) on a line, per station, from 28c to 35c per month.

The petitioner proposes to reduce the rate for extension telephones, either business or residence, from one dollar to fifty cents per month.

The petitioner also proposes to put into effect the following new classifications and rates:

Private grounded line outside of City, extra for each one-half (1-2) mile or fraction thereof	\$.25	per mo.
Private metallic outside of City, extra for each one-half (1-2) mile or fraction thereof	.50	" "
Extension six-inch gongs, either business or residence	.35	" "
Desk telephones in residence, extra	.25	" "
Metallic party lines, Harmonic Ringing, extra per station	.25	" "

A hearing was held by the Commission at Springfield, on July 22, 1914. From the testimony introduced at that time, it appears that the petitioner operates a general telephone system

with local exchanges at a number of cities and villages in southern Illinois; that the rate in force at nearly all its exchanges except Grayville, on July 1, 1914, and at the present time, for individual grounded line business telephones is two dollars (\$2.00) per month; and that the rate for switching rural lines, in force at nearly all its telephone exchanges except Grayville, is thirty-five cents per month.

The evidence introduced by petitioner tends to show that the above rates for the respective classes of service mentioned are reasonable, and that the petitioner should be allowed to increase its rates for said classes of service at its Grayville Exchange, to conform with its regular rates for similar service, under similar conditions, at its other exchanges. No objection was made by any of the patrons of the telephone company or by the village authorities of Grayville, to the above proposed change in rates.

As to the new classes of service to be rendered by the petitioner and the proposed rates therefor, the Commission does not deem it necessary, at this time, to inquire into or determine the reasonableness of said rates, for the reason that no increase is there involved and the reasonableness of said proposed rates is not questioned at this time.

In conference ruling No. 14 the Commission among other things, said:

"It is hereby ordered . . . that any change in 'any rate or other charge or classification, or any rule, regulation, practice or contract, relating to or affecting any rate or other charge, classification or service, or any privilege or facility,' which does not result in any increase in any rate or other charge of any public utility, may be made and shall become effective thirty days after a schedule of the same shall have been filed with this Commission, and posted in accordance with the terms of sections 33 and 34 of an act entitled 'An Act to Provide for the Regulation of Public Utilities,' approved June 30, 1913, and effective January 1, 1914."

As there has been no complaint filed with the Commission, by anyone, questioning the reasonableness of the above proposed new rates, said rates may become effective upon the petitioner complying with the conditions set forth in conference ruling No. 14 supra.

The Commission can perceive no objection to allowing the petitioner to reduce its rate for extension telephones,—either business or residence,—from one dollar to fifty cents per month.

The Commission having carefully considered the evidence, facts and circumstances shown by the record in this case,—

It is therefore ordered, that the petitioner be and it is hereby authorized, until the further order of this Commission, to increase its present rate for individual grounded line business telephones at its Grayville Exchange, from one dollar and seventy-five cents to two dollars per month; also to increase its rate for switching rural lines, minimum of six (6) on a line, at said Grayville Exchange, from twenty-eight cents to thirty-five cents per month.

The Commission reserves the right to inquire further into the reasonableness of the above rates at any time, either upon its own motion or upon complaint.

The above changes in rates shall become effective from and after January 1, 1915, and shall be filed with the Commission, and posted and published as provided by section 34 of "An Act to Provide for the Regulation of Public Utilities."

By order of the Commission this 7th day of January, 1915, dated at Springfield, Illinois.

Note.—Upon the application of the same company to make changes in its classifications and schedules in Fairfield and Clay City, Illinois, the Commission reached the same conclusions upon facts similar to those set forth in the above case. See *Re Commercial Telephone & Telegraph Co.*, No. 2507, January 7, 1915; *Re Commercial Telephone & Telegraph Co.*, No. 2510, January 7, 1915.

INDIANA PUBLIC SERVICE COMMISSION.

IN RE APPLICATION OF THE INDIANA GASLIGHT COMPANY.

[No. 1102.]

Rates — Natural gas — Increase by consent.

A natural gas company was allowed to put into effect a schedule of increased rates, where it appeared that returns from the existing charges were insufficient to yield a fair return, and that committees

of citizens appointed by the mayors and common councils of the two cities affected had agreed to the proposed schedules, and that the mayor and common council of one of the cities and the citizens' committee of the other had requested the establishment of such schedule.

[January 20, 1915.]

APPLICATION for authority to increase rates; granted.

By the **Commission**: The Indiana Gaslight Company on the 13th day of November, 1914, filed with the Public Service Commission of Indiana a petition alleging that it was a corporation organized and doing business under the laws of the state of Indiana, with its principal place of business in the city of Noblesville, Hamilton county, Indiana, and engaged in supplying natural gas to the city of Noblesville, and the city of Tipton, both in the state of Indiana, and along the line operated by said company.

Said petition sets forth the schedule of rates now in force, which is as follows:

50 cents per 1,000 cubic feet for the first 5,000 cubic feet consumed in one month.

40 cents per 1,000 cubic feet for the next 20,000 cubic feet consumed in one month.

30 cents per 1,000 cubic feet for all over 25,000 cubic feet consumed in one month.

50 cents per month minimum service charge.

In said petition said company requests authority to increase the rates for the cities of Noblesville and Tipton. It is averred in the petition that, at the time said company was organized, it took over the properties of an existing natural gas company supplying the cities of Tipton and Noblesville with natural gas produced by local wells. The natural gas supply at that time was thought to be largely exhausted, and this company was organized for the purpose of supplying artificial gas when the natural gas field was exhausted. That in cleaning out its said existing natural gas wells, the supply of gas was considerably increased, and said company was led to believe that such increase would be permanent, and accordingly the schedule of rates now in force was fixed upon that basis, and in the belief that they would yield a fair return on the value of the property invested in the business.

The increase in the production did not prove to be permanent, and said company was compelled to purchase to supplement its own natural gas supply a supply of gas from the Logan Natural Gas & Fuel Company, which brought gas from the West Virginia fields to the city of Elwood. To obtain this West Virginia gas said company was compelled to construct a pipe line from Elwood, Indiana, to Tipton, Indiana, and from Tipton, Indiana, to Noblesville, a distance of 27 miles. That the decrease in the production of the wells made it necessary to constantly increase the purchases of the West Virginia gas from the Logan Natural Gas & Fuel Company, and transport the same through its pipe lines to the various consumers. That as a result of the increased cost the revenues are insufficient to yield a fair return upon the value of the property employed in carrying on its business. That the company has been compelled to incur a large floating debt, which, owing to the inadequacy of its revenues, it is neither able to pay in full or refund.

That on the 15th day of January, 1915, the Indiana Gaslight Company filed its amended petitions, in which it was alleged that, since the filing of the original petition in said cause, negotiations with reference to the establishment of a new rate for gas in each of said cities has been entered into by representatives of the company and a committee of ten appointed by the mayor and common council of said cities; that as a result of said negotiations an agreement has been arrived at by which the following rate has been agreed upon by said company and each of said respective cities, as follows:

For the first 1,000 cubic feet of gas consumed in one month through one meter, 75 cents per 1,000 cubic feet of gas.

For the next 4,000 cubic feet of gas consumed in one month, through one meter, 60 cents per 1,000 cubic feet of gas.

For the next 20,000 cubic feet of gas consumed in one month, through one meter, 40 cents per 1,000 cubic feet of gas.

For all over 25,000 cubic feet of gas consumed in one month through one meter, 30 cents per 1,000 cubic feet of gas.

The minimum charge monthly to be 75 cents.

Said amended petition further averred that the written request of the mayor and common council of the city of Noblesville for the establishment of said rates, and also the written request of

the citizens' committee of the city of Tipton, duly attested by the mayor of said city of Tipton, and the clerk thereof, and each requesting the establishment of said schedule of rates, was filed with said amended petition as a part thereof. The prayer of the amended petition was that the Public Service Commission of Indiana authorize and approve the schedule of rates agreed upon.

The written request of the mayor and common council of the city of Noblesville filed with said amended petition is set out in full as follows:

"This is to certify that a committee of citizens appointed by the mayor of the city of Noblesville, at the request of the common council of said city, to investigate the merits of the application of the Indiana Gaslight Company for an increase in its gas rates in the cities of Noblesville and Tipton, Indiana, after having investigated the same, have recommended to the mayor and common council of said city of Noblesville that they present to your Honorable Commission the following as a satisfactory rate, to be adopted for said City of Noblesville, provided said Indiana Gaslight Company agree to the same; said rate to become effective on and after May 1st, 1915, to wit:

"For the first 1,000 cubic feet of gas consumed in one month, through one meter, 75 cents per 1,000 cubic feet of gas.

"For the next 4,000 cubic feet of gas consumed in one month, through one meter, 60 cents per 1,000 cubic feet of gas.

"For the next 20,000 cubic feet of gas consumed in one month, through one meter, 40 cents per 1,000 cubic feet of gas.

"For all over 25,000 cubic feet of gas consumed in one month through one meter, 30 cents per 1,000 cubic feet.

"The minimum charge per month to be 75 cents.

"And pursuant to said recommendation said mayor and common council of said city of Noblesville now request your Honorable Commission to establish the above rate for the city of Noblesville."

The written request of the citizens' committee of the city of Tipton, appointed by the mayor of the city of Tipton, and filed with the amended petition, and made a part thereof, is set out in full, and is as follows:

"This is to certify that a committee of citizens appointed by

the mayor of the city of Tipton to investigate the merits of the application of the Indiana Gaslight Company for an increase in its gas rates in the cities of Noblesville, Indiana, and Tipton, Indiana, after having investigated the conditions of said company and investigated the merits of said application, did meet in the city of Tipton, Indiana, on the 13th day of January, 1915, and finally consider said matters, and after full consideration thereof said committee concluded and recommend that the application of the said company should be granted in part, and that the rates agreed to with the city of Noblesville are fair and should be accepted as the rates for the city of Tipton, Indiana, said rates to become effective May 1st, 1915, and are as follows, to wit:

"For the first 1,000 cubic feet of gas consumed in one month through one meter, 75 cents per 1,000 cubic feet of gas.

"For the next 4,000 cubic feet of gas consumed in one month through one meter, 60 cents per 1,000 cubic feet of gas.

"For the next 20,000 cubic feet of gas consumed in one month, through one meter, 40 cents per 1,000 cubic feet of gas.

"For all over 25,000 cubic feet of gas consumed in one month through one meter, 30 cents per 1,000 cubic feet.

"The minimum charge per month to be 75 cents.

"And pursuant to the recommendation of said committee it is requested by said committee that the appearance of said committee, and the objections thereof, be withdrawn, and that the above rates be established as the rate for the said city of Tipton, Indiana."

To which is also attached the following certificate of the mayor of the city of Tipton, and attested by J. H. Small, clerk of the said city of Tipton, Indiana, to wit:

"I hereby certify that the within report as certified to by the citizens' committee appointed by me to investigate the matter of the application of the Indiana Gaslight Company for an increase in rates in the city of Tipton, Indiana, was the action determined upon by said committee. And the report of said committee having been approved by them, there will be no further appearance by said committee.

"Dated this the 14th day of January, 1915."

When said amended petitions were presented, there were pres-

ent the chairman of the Public Service Commission, and Commissioners Clark, Edwards, and McClure. The evidence of two witnesses was heard, and has been transcribed by one of the official reporters of the Commission.

And the Commission, having examined the written agreements filed as aforesaid, and the evidence heard on the trial of the petition, and being duly advised in the premises, finds that the prayer of said amended petition ought to be granted.

It is therefore ordered by the public service commission of Indiana, That the Indiana Gaslight Company be authorized, empowered, and directed to file with said Commission the following schedule of rates for said cities of Noblesville, and Tipton, Indiana, to wit:

"For the first 1,000 cubic feet of gas consumed in one month through one meter, 75 cents per 1,000 cubic feet of gas.

"For the next 4,000 cubic feet of gas consumed in one month, through one meter, 50 cents per 1,000 cubic feet of gas.

"For the next 20,000 cubic feet of gas consumed in one month, through one meter, 40 cents per 1,000 cubic feet of gas.

"For all over 25,000 cubic feet of gas consumed in one month, through one meter, 30 cents per 1,000 cubic feet of gas.

"The minimum charge per month to be 75 cents.

"It is further ordered by said Commission that said schedule of rates shall be filed within thirty days from this date, and shall be effective on the 1st day of May, 1915.

MARYLAND PUBLIC SERVICE COMMISSION.

JOHN E. POTEE ET AL.

v.

BROOKLYN & CURTIS BAY LIGHT & WATER COMPANY.

[Case No. 838.]

Valuation — Construction in advance of present needs.

Upon a proposal to increase water rates, in determining whether the sum upon which the company based its estimate of return was too high, consideration was given to evidence that the company had provided a plant sufficiently large not only to care for present prospective custom-

ers, but also for all customers that might be added for a number of years to come.

Rates — Fair return — Investment in excess of present needs.

Present users cannot be expected to pay a rate sufficiently high to yield a fair return on the money invested, in excess of the amount necessary to properly provide for the present consumption.

Rates — Increase — Factors to be considered — Ability of consumer to payee.

Upon a proposal to increase water rates, consideration was given to evidence that the inhabitants of the community to be served were mostly manual laborers earning small salaries, who could not afford to take water at the advanced rates.

Rates — Increase — Factors to be considered — Increased use.

Upon a proposal to increase water rates, consideration was given to the possibility that with a proper rate a considerably larger number of consumers might be obtained than that which the company had taken as the basis of its estimates.

[January 15, 1915.]

APPLICATION to increase rates; schedule of rates established.

Henry, Commissioner: The petition in this case was filed on the 23d of September, 1914, by John E. Potee, chairman, and others, members of a committee of residents of Brooklyn, in Anne Arundel county, who complain that the rates for water proposed by the respondent, as shown by the company's schedule, are excessive and beyond the ability of the complainants to pay.

The respondent filed its answer on October 5th, 1914, alleging that the proposed rates are reasonable, and that they were carefully prepared by an expert after full consideration of all the elements that ought to affect the question.

The case came up for hearing on November 15th, 1914, at which time the parties were present with counsel and witnesses.

While the petitioners complained only of the rates proposed for Brooklyn, yet it was the understanding and agreement at the hearing that the rates for Curtis Bay district should be considered at the same time, as the respondent serves both communities, and the conditions with respect to the two towns were conceded to be practically identical as regards the water supply.

Preliminary to the examination of the evidence, it may be well to lay down the principle of law applicable to the situation. Counsel for the complainants, in his carefully prepared brief, states the legal issue in the following words:

"The complainants contend that the right of the corporation to earn a fair return upon its investment is qualified by the proviso that in no event shall the company be permitted to charge the consumer more than the service is reasonably worth to them."

The soundness of the principle contended for by the complainants is sustained by citations from text-books of acknowledged authority, decisions of the court of appeals of Maryland and decisions of the Supreme Court of the United States.

The attorney for the respondent concedes the correctness of this law while denying that the facts of the pending case make it applicable against the rates proposed. It is needless to add that we concur in the correctness of the principle of law which must guide us to our conclusion.

The respondent corporation was incorporated more than twenty years ago, and was authorized by its charter, among other things, to supply water to Curtis Bay and Brooklyn and their vicinities in Anne Arundel county. The people of Curtis Bay have been well served by the respondent for many years, but it is only within the present year that the company has extended its mains to Brooklyn and its environs, and become ready to serve the people of that locality.

It now proposes to furnish water to the inhabitants of Brooklyn at the following rates:

"Every metered water supply service shall have a quarterly minimum charge or rate on each meter installed, varying with and based upon the size of meter required and installed in accordance with the rules of the company as follows:

METER RATES:

$\frac{5}{8}$ inch meter.....	\$ 3.00	per	quarter.
$\frac{3}{4}$ " "	4.25	"	"
1 " "	6.00	"	"
$1\frac{1}{2}$ " "	12.00	"	"
2 " "	16.00	"	"

"Meters larger than 2 inches shall have a quarterly minimum charge or rate, the amount of which shall be determined by the company, but in no case to be less than \$18 per quarter."

The same rates are made applicable to the Curtis Bay district after the installation of a meter service there in the place of the present service, until which time, commencing January 1st, 1915, the following rates are to prevail:

"The flat rates for water supply service in the Curtis Bay district, commencing January 1st, 1915, and continuing until changed or completely withdrawn by the metering of such service, are as follows:

"To private families, in dwelling houses only, for each family:

Where the house is not over 18 feet front, rate is \$12.00 per year.

Where the house is not over 19 feet front, rate is \$13.00 per year.

Where the house is not over 22 feet front, rate is \$14.00 per year.

Where the house is over 22 feet front, rate is \$15.00 per year."

In addition to these flat rates, extra charges are made for specific purposes and attachments.

The old rates at Curtis Bay were as follows:

For dwellings, 12 feet front or less.....	\$ 5.00
do. 13 do.	6.00
do. 14 do.	7.00
do. 15 do.	8.00
do. 16 do.	9.00
do. 17 do.	9.00
do. 18 do.	10.00
do. 19 do.	11.00
do. 20 do.	12.00
do. 21 do.	12.00
do. 22 do.	12.00

It thus appears that the new rates are a distinct advance over the old rates prevailing in the Curtis Bay district.

With reference to the reasonableness of these rates we must concede that when compared to the rates established by other water companies, doing business under similar or nearly similar circumstances, they seem fair and moderate, nor do they seem excessive when a comparison is made between the gross revenues and the operating expenses. It must be admitted, too, that the financial condition of the company is not strong, and that no dividends on its stock has been declared or paid for six or seven years. If we should accept the estimates of the company as to the expenses and revenues of the future, there would be a small margin of profit at the proposed figures, making possible only a low dividend.

But there is another side to be considered. Brooklyn is a town of 400 or 500 houses, and it was proved at the hearing, as alleged in the petition, that its worthy inhabitants are mostly manual.

laborers earning small salaries, and that the dwellings there, for the most part, are blocked together and are only about 14 feet in width. It is stated that the wages of a majority of these citizens would average from \$1.50 to \$1.75 per day, and the rental paid by them for houses varied from \$8 to \$12 per month. It was the opinion of a number of witnesses that these people could not afford to take water at these proposed rates, and \$8 was named by some of the witnesses testifying for the complainants, and \$10 by one of them, as a rate that the people could afford to pay and at which they would take water. We must conclude that the residents there, who at present are drawing water from private or public pumps, desire the convenience which is enjoyed by people of all progressive communities in having water ready at hand in their own dwellings. A previous case by the residents before this Commission in which it was sought to compel the respondent to extend its mains to their town proves this, unless we should question the sincerity of the application then made, and that we have no disposition to do. The question then comes back, what is a fair rate,—fair to the respondent company and to the complaining citizens? We do not feel it essential, in order to answer that query, to enter into a detailed analysis of the value of the property now devoted by the company to the public service.

Suffice it to say that we think the sum of \$150,000, upon which this estimate of a proper return is based, is too high, especially when we consider that in the construction of its plant to Brooklyn the respondent provided a plant sufficiently large not only to take care of the present prospective customers in that territory, but also all customers that might be added by the future development and improvement of the property in and around Brooklyn for a number of years to come. In doing this, the apparatus at its pumping station was materially enlarged, and its mains were run through certain sections in Brooklyn where the property is unimproved, but which the defendant hoped would be improved in the future. This additional outlay the defendant preferred to make, and perhaps wisely so, rather than increase the capacity of the plant as new demands were made upon it; but certainly the present users cannot be expected to pay a rate sufficiently high to yield a fair return on the money invested in excess of the amount

necessary to properly provide for the present consumption. If the company elects to make this outlay now, rather than wait until there is a demand for it, then the company, and not the users, should stand the interest on this amount.

Then, again, the company is basing its estimated revenues upon receiving only 200 customers in Brooklyn. As before stated, the town has between 400 and 500 houses, and if the desire for water heretofore expressed by the residents still continues, it is quite possible that, with a proper rate, a considerably larger number of customers may be obtained.

Taking these facts into consideration, and guided by the principle of law above announced, we are of the opinion that the following rates are reasonable and should become effective:

$\frac{5}{8}$ inch meter.....	\$ 2.50 per quarter.
$\frac{3}{4}$ " "	3.50 " "
1 " "	5.00 " "
$1\frac{1}{2}$ " "	10.00 " "
2 " "	13.00 " "

The aforesaid rates are to be inclusive of the use of a meter, and are to be applicable to both the Curtis Bay district and the Brooklyn district, but inasmuch as the company has shown some reason for time in putting into effect the meter service for the Curtis Bay district, these rates as to that district are deferred until July 1st, 1915. Until that time the existing rates will be continued, with the proviso that the new rates shall be applied to each service from the time a meter is installed.

We approve of the quantity of water allowed to each consumer, without extra charge, in the schedule filed, as well as the rates per 1,000 gallons for excess consumption therein published.

Except as modified above, the rules and regulations filed by the company will be approved, and an order will be passed accordingly.

ORDER NO. 2148.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, filed an opinion

containing its findings of fact and conclusions thereon, which opinion is hereby referred to and made a part hereof;

It is, therefore, this 5th day of January, in the year 1915, by the Public Service Commission of Maryland,

Ordered, (1.) That the said Brooklyn & Curtis Bay Light & Water Company is hereby authorized and directed to install water meters in both the Curtis Bay district and Brooklyn district, and to charge the following rates to its customers for water service:

"Every metered water supply service shall have a quarterly minimum charge or rate on each meter installed, varying with and based upon the size of meter required and installed in accordance with the rules of the company as follows:

"METER RATES.

$\frac{5}{8}$ inch meter.....	\$ 2.50 per quarter.
$\frac{3}{4}$ " "	3.50 " "
1 " "	5.00 " "
$1\frac{1}{2}$ " "	10.00 " "
2 " "	13.00 " "

"Meters larger than 2 inches shall have a quarterly minimum charge or rate, the amount of which shall be determined by the company, but in no case to be less than \$15 per quarter.

"The minimum charge or rate shall entitle the consumer, without excess charge, to have supplied through the meter on the service the number of gallons of water set opposite the respective sizes of meters, as follows:

"SIZE OF METER.

$\frac{5}{8}$ inch meter.....	8,572 gallons.
$\frac{3}{4}$ " "	12,143 "
1 " "	17,143 "
$1\frac{1}{2}$ " "	34,285 "
2 " "	45,714 "

"Rates per 1,000 gallons for excess consumption beyond allowance under quarterly minimum:

1st	15,000 gallons per quarter at 35 cents per M gallons.
2nd	15,000 " " " " 30 " " " "
3rd	15,000 " " " " 25 " " " "
4th	15,000 " " " " 20 " " " "
5th	15,000 " " " " 15 " " " "
6th	15,000 " and over per quarter 12 cents per M gallons.

The aforesaid rates shall include the use of a meter, and no special rental for any meter is authorized or permitted.

Ordered, (2) The aforesaid rates shall become effective in the Brooklyn district on and after the first day of January, 1915, and that the said Brooklyn & Curtis Bay Light & Water Company is hereby given until the first day of July, 1915, in which to install metered services in the Curtis Bay district, until which said date the former rates are hereby continued in force, with the proviso that the new rates, herein authorized, may become effective and applied to each service from the date of the installation of a meter.

Ordered, (3) That the schedule and rules governing the supply of water by the said Brooklyn & Curtis Bay Light & Water Company, on file in these proceedings, except as hereinbefore stated, are hereby approved.

Albert G. Towers, E. Clay Timanus, W. Laird Henry, Commissioners.

Note.—Right of a public service corporation to anticipate future needs in the construction or extension of its plant.

It is generally held, without dissent, that a public service corporation may make some provision for future needs, in the construction or extension of its plant.

In *Ely v. Ely Light & P. Co.* (1913) 3d Ann. Rep. Nev. P. S. C. 295, 315, 24 A. T. & T. Co. Com. L. 578, it is said: "We do not think that it is sound doctrine for us to hold that a public service corporation shall be tied down to the construction of a plant no larger than is actually needed for the service immediately to be performed. Every company engaged in such business has the right to look into the future, and provide for increased business which seems reasonably in prospective. It is a well-known fact that it is much more economical to construct a plant of sufficient dimensions as an entirety than to add to it from time to time as the business increases; besides which, the plant which is constructed at once, and as an entirety, is usually more harmonious in its structure, more efficient and more economically operated."

And in *Long Branch Commission v. Tintern Manor Water Co.* (1905) 70 N. J. Eq. 71, 62 Atl. 474, 479, it is declared that "the supplying company is, as we have seen, under obligation to keep in advance of the present demand, and take liberal account of the probable increase of demand due to increase of population."

P. U. R.—4.

It has been said that questions as to the propriety of particular anticipations of future needs depend upon whether or not the provision is a reasonable one.

The Commission, in *Re Lincoln Teleph. & Teleg. Co.* (1913) 6th Ann. Rep. Neb. State R. C. 191, 199, 19 A. T. & T. Co. Com. L. 134, said: "Investigation of the affairs of many of the telephone companies in cities above 20,000 population demonstrates clearly that every prudently projected plant has more or less idle plant intended for future development, and it is necessary, in order to be able to efficiently serve the public and meet promptly increases in the demands, that this should be so. There are, of course, limits within which such advance construction will be reasonable, and when it is reasonable, there can be no question but that the corporation is entitled to consider it as part of the plant upon which it shall be entitled to make earnings."

Some jurisdictions have indicated that if the construction in excess of present needs is proper, it should not be deducted from plant valuation.

In *Municipal League of Phoenix v. Pacific Gas & Electric Co.* (1913) 1st Ann. Rep. Ariz. Corp. C. 353, 369, 21 A. T. & T. Co. Com. L. 699, it is said: "It is found that the company has anticipated the growth of its gas business by the installation of equipment of greater capacity than is at present required, but in our opinion, and considering the facts presented, it should not be penalized for so doing by reducing the value of its existing plant to the value of a plant adequate for its present needs."

And in *Pillsbury v. People's Gaslight Co.* (1914) 4 N. H. P. S. C. R. 337, 413, 32 A. T. & T. Co. Com. L. 608, the Commission said: "There is also a present over-capacity in holders, secured at an expense of from \$16,000 to \$19,000. Authorities before cited would justify a disregard of this additional capacity in fixing value for present rate purposes. We have, however, not taken this over-capacity into account, because it has seemed to us that the respondent exercised good business judgment, when building the last holder, in building somewhat in advance of the existing demand."

Des Moines Water Co. v. Des Moines, No. 2468, in equity, U. S. C. C. Iowa S. D. Central Division, Report of George F. Henry, Master in Chancery, filed September 16, 1910, quoted in 1 Whitten on Valuation 198, 199: In ascertaining this actual or reproductive value, the company has the right to anticipate the growth of its business and to be allowed a proper return on a plant of sufficient capacity for such growth.

In *Re Montreal* (1913) 13 A. T. & T. Co. Com. L. 93, the Canada Board of Railway Commissioners said: "There is no question that

preparation for future needs is one of the incidents of the proper management of a public utility corporation. If it is to allow demands for service to pile up, and then make an expansion only after the urgency is sufficiently great, the public will be subjected to the disadvantage of delay in obtaining service, and at the same time the piecemeal method of construction this will necessitate will undoubtedly add to the cost of the plant. A comprehensive system of preparation for future needs must be followed if there is to be proper expansion. . . . Again, even admitting that for some considerable period of time there is plant not actively in use, it does not necessarily follow that it is fair to deduct this from the plant value."

It is said that reasonably liberal provision for the future should not be discouraged, and that operators are entitled to reasonable latitude.

In *Re Haverhill* (1912) 28th Ann. Rep. Bd. of G. & El. Lt. Com'rs of Mass. 41, 49, 15 A. T. & T. Co. Com. L. 324, it is said: "The valuation made for the city seems to have been affected by an opinion that the works are poorly located for that development which the future may require, and to allow less than the otherwise fair value of the present generating plant because it is too large for the present needs. The reasons given, however, for continuing to use the present site, show clearly that no change of location can advisedly be made until long after the time to which rates now made will apply. The board cannot, in the general interest of consumers, discourage the reasonably liberal provision for the future which this company seems to have made."

And in *Wisconsin, Racine v. Racine Gaslight Co.* (1911) 6 Wis. R. C. R. 228, 286, the Commission declared: "From the facts thus brought out, it is quite clear that the investment in the physical property of the plant is both actually and relatively somewhat greater than the amount that is ordinarily required for such demands upon the plants as are made by its customers in this case. In fact, the situation in this respect is such that it is far from clear whether it would be equitable to all concerned to fix rates in this case, the receipts from which will cover operating expenses, and, in addition to this, a return for interest, profit, and depreciation on the entire cost of reproduction of the plant at as high rates as those which might ordinarily be regarded as adequate in cities of this size. This statement is made advisedly, for it is obvious that operators are entitled to reasonable latitude in such matters, and that it is sometimes exceedingly difficult to accurately determine future demands."

A new plant or a new addition, however, may not expect an immediate return on its investment.

Re Application Southern P. Co. (1914) Decision No. 1863, Advance Sheet, Railroad Commission of California. "We believe with-

out question," said the California Commission, "that the company was justified in the electrification of these lines. We are, however, not of the opinion that it was justified in the construction of some of the added lines, except in contemplation of increased traffic in the future. Utilities are always required to have an eye to the future, and they should ultimately be paid for the expenditures made. But one of the elements always urged in a valuation case as a part of the value of the property is the cost of development of business and the interest on the money necessarily idle during the development period. If the development period is not too long, and the lines are wisely constructed, there can be no question that a proper return should ultimately be had from subsequent traffic. But it is idle to urge that where facilities are constructed in excess of present needs, that the rates to the present comparatively few patrons should be so arranged as to give an immediate return. The Supreme Court of the United States has many times discussed this, and of course the rule is well established that facilities constructed in excess of the needs of the patrons may not be made the basis for unreasonable burdens upon the present consumers."

In *Southern P. Co. v. Bartine* (1909, C. C. D. Nev.) 170 Fed. 725, 767, the court said: "It does not necessarily follow that a schedule of maximum rates fixed by law is confiscatory because it fails to yield a reasonable return on the investment, above taxes, operating expense, and interest on the indebtedness. The rates must be reasonable to the company, but they must, in any event, be reasonable to the public. If a railroad is built into a new, sparsely settled territory, with a view of serving a large future population and developing business, the Constitution does not require the few people and the small business of the present time to pay rates which will yield an income equal to the full return to be gathered when the country is populated and business developed to the full capacity of the road."

The return permitted, however, may be somewhat greater than a fair return on an investment merely sufficient to meet present demands.

In *Long Branch Commission v. Tintern Manor Water Co.* (1905) 70 N. J. Eq. 71, 62 Atl. 474, the Commission said: "These considerations lead to the conclusion that the water company when it starts with new works, or a large addition to the original supply, is entitled to an income therefrom somewhat greater than what is due to the cost of work sufficient merely to meet the present demands. I say 'somewhat greater,' for I do not mean to be understood as holding that capitalists ought to expect an immediate compensatory income from an enterprise of this character. But, on the other hand, it would be manifestly unjust to expect them to invest their money in a plant necessarily larger than present demands require and take

as an income therefor such a sum as would satisfy an investment sufficient to meet present demands."

Plants constructed on too large a scale often are held not entitled to a return on the full cost.

In *Ely v. Ely Light & P. Co.* (1913) 3d Ann. Rep. Nev. P. S. C. 295, 298, 24 A. T. & T. Co. Com. L. 578, it is said: "It is argued very strongly by respondent's counsel that the value of the new plant should be considered in determining the actual value of the property used in rendering the service. It is claimed that this should be done for the reason that the new plant has on one or two occasions been used to render the service while the old plant was being repaired. . . . The manager of the respondent company frankly admitted in his testimony that the construction of the new plant was a mistake on the part of the company; that it was built upon the theory that Ely would speedily develop into another Butte, and that such plant would be necessary to furnish adequate service. But while Ely is a good town for its size, it has not developed into a Butte, nor does there appear to be any immediate prospect of its doing so, although as to that, no one can speak with certainty. . . . Clearly it would be unjust to require the people of a small city like Ely to pay in their electric-light charges for the mistake of the company in building an unnecessarily large and expensive plant. The company's manager also admitted that the new plant, by reason of its great size, could not be used to serve Ely with electric light and power except at a loss. Therefore, we are unable to see why the Commission should give any consideration whatever to either the cost or reproduction value of the new plant."

And in *Southern P. Co. v. Bartine* (1909; C. C. D. Nev.) 170 Fed. 725, 751, the court said: "The cost of a plant devoted by its owner to public service is not always a reliable criterion of its reasonable value; it may have cost too much, or it may have been constructed on a scale too large for the needs of the public which it is intended to serve."

The Supreme Court, in *San Diego Land & Town Co. v. Jasper* (1903) 189 U. S. 439, 446, 447, 47 L. ed. 892, 896, 23 Sup. Ct. Rep. 571, also declared that "if a plant is built, as probably this was, for a larger area than it finds itself able to supply, or, apart from that, if it does not, as yet, have the customers contemplated, neither justice nor the Constitution requires that, say, two thirds of the contemplated number should pay a full return."

And in an early case in Maine, *Brunswick & T. Water Dist. v. Maine Water Co.* (1901) 99 Me. 371, 59 Atl. 537, 539, the court said: "It is true that the fair value of the property used is the basis of calculation as to reasonableness of rates, but, as was pointed out in the Waterville Case (1902) 97 Me. 185, 60 L.R.A. 856, 54 Atl. 6, this is not the only element of calculation. There are others;

as, for instance, the risks of the incipient enterprise on the one hand, and whether all the property used is reasonably necessary to the service, and whether as a structure it is unreasonably expensive, on the other. For a simple illustration, suppose that a 500 horse-power engine was used for pumping when a 100 horse-power engine would do as well. As property to be fairly valued, the large engine might be more valuable than the smaller one; yet it could not be said that it would be reasonable to compel the public to pay rates based upon the value of the unnecessarily expensive engine."

In *Capital City Gaslight Co. v. Des Moines* (1896; C. C. S. D. Iowa, C. D.) 72 Fed. 829, 844, it is said: "The experts sworn on plaintiff's behalf have varied in their figures from about \$450,000 to about \$500,000. From these estimates must be taken that part of the present plant which was used for fuel gas, and is now not available for present use; also, the overestimate by them made on the real estate; and also making allowance for storage capacity on the holder last erected beyond what seems, under present circumstances, profitably necessary."

To the same effect, *Boise City Irrig. & Land Co. v. Clark* (1904; C. C. A. 9th C.) 65 C. C. A. 399, 131 Fed. 415.

The dividing line between reasonable and excessive provisions for the future is not defined with certainty. Provision for fifty years' growth in a water plant has been held to be excessive.

In *Long Branch Commission v. Tintern Manor Water Co.* (1905) 70 N. J. Eq. 71, 62 Atl. 474, 477, 480, it was said: "The inhabitants of the borough of Long Branch ought not to be compelled to pay water rates adjusted to pay an income on a greater outlay in a plant than is reasonably needed for its supply. . . . Defendant admits that its plans were adapted to a future estimated growth of fifty years. Mr. Sherrerd says, and I agree with him, that fifty years is too long for a forecast. He fixed thirty years as the usual limit."

Provision for excess power in an electric plant is discussed as follows, in the majority opinion in *Ely v. Ely Light & P. Co.* (1913) 3d Ann. Rep. Nev. P. S. C. 295 (p. 298) 24 A. T. & T. Co. Com. L. 578: "It is claimed that the respondent company should be allowed for excess of power which is necessary to meet sudden and extreme demands. Our answer is that such allowance is already being made. The actual power of the plant is about 250 kilowatts after allowing 25 per cent for overload capacity, while the maximum demand thus far has been only about 109 kilowatts. It seems to the Commission that this is all the excess of power or capacity that the people should be called upon to pay for in order to receive fair and adequate service." Explanatory statement, p. 315: "It is true that the nominal capacity of the generator is 200 kilowatts, with an overload capacity of 50 kilowatts more. But the capacity of the plant,

as a whole, is much less than 250 kilowatts. The company uses both steam and water power. Combined they develop 160 horse power, capable of generating about 119 kilowatts, only 10 kilowatts above the peak load. This seems to us none too much excess power."

MICHIGAN RAILROAD COMMISSION.

IN RE VALLEY HOME TELEPHONE COMPANY ET AL.

[D-883.]

Merger — Telephone lines.

Telephone mergers should provide for extending, rather than curtailing, the use of telephone facilities.

Merger — Condition imposed — Restoration of physical connection.

An order authorizing the purchase of independent telephone exchanges by a telephone company was granted upon condition that physical connection between such exchanges and the lines of another company, which had previously been severed, should be restored.

[January 6, 1915.]

APPLICATION for an order permitting the consolidation of telephone properties; granted conditionally.

Appearances: A. H. McMillan for petitioners.

OPINION.

Hemans, Chairman: The application in this matter is for the order of the Commission approving the purchase by the Valley Home Telephone Company of the telephone exchanges at Owendale, Huron county, and Gagetown, Tuscola county, from W. B. Serviss, who is at present owner of the same, for an agreed consideration of \$12,000.

From the record made it appears that for sometime prior to the month of September last past, the telephone exchanges at Owendale and Gagetown were independently operated, and had upon their boards the toll lines of both the Valley Home Telephone Company of Saginaw and the Consolidated Telephone Company of Bad Axe, whereby subscribers had access to all independent and all Michigan state connections in the state. At about the time indicated the properties were sold by their then owner to Mr. Serviss. Application for this sale was not presented to or passed upon by this Commission. Soon after the

conveyance the lines of the Consolidated Telephone Company, over which access was had to all Michigan state connections in the state, were disconnected, and the service of the patrons of both the Gagetown and Owendale exchanges limited to the lines of the Valley Home Telephone Company.

It appears to us that the purchase of the Gagetown and Owendale exchanges by, and their consolidation with, the Valley Home Telephone Company, is desirable. In all previous telephone consolidations sanctioned by this Commission, all telephone connections of the various properties have been preserved, and subscribers accorded the enlarged service. Telephone mergers should provide for extending, rather than curtailing, the use of telephone facilities.

An order authorizing the merging of the Gagetown and Owendale exchanges with the Valley Home Telephone Company for the consideration of \$12,000 will be entered, but upon condition that the connection between such exchanges and the lines of the Consolidated Telephone Company shall be restored as they existed prior to the severance of such connection, in the month of September, last past.

Lawton T. Hemans, Chairman; C. L. Glasgow, Commissioner;
C. S. Cunningham, Commissioner.

MICHIGAN RAILROAD COMMISSION.

READING CENTRAL TELEPHONE COMPANY

v.

FAYETTE RURAL TELEPHONE COMPANY.

[T-75.]

Commission's jurisdiction — Mutual telephone companies.

The Michigan Railroad Commission has jurisdiction over telephone companies doing business upon a mutual or so-called free service basis, under a statute extending jurisdiction over all persons operating telephone lines or exchanges doing a telephone business within the state.

Telephones — "Doing a telephone business" — Statutory construction.

Under a statute giving a railroad commission jurisdiction over all persons, corporations, and associations operating telephone lines, or exchanges doing a telephone business, the phrase "doing a telephone business" excludes only such facilities as are entirely private in character.

Telephones — Private facility.

"A person, corporation, or association which sets its poles and strings its wires upon the highways, which installs a central switchboard, and which gives means of communication between its immediate patrons and with those of distant organizations, cannot be said to be a private facility" not doing a telephone business, upon the theory that the cost of its maintenance is apportioned in the form of an assessment.

Public calling — Mutual telephone company.

The business of a telephone company or association operating upon a mutual basis is affected with a public interest.

• **Service — Interchange of facilities.**

An interchange of telephone communication and service by means of lines and circuits already forming a physical connection between the exchanges of a telephone corporation and a mutual rural telephone company was ordered, the toll rate to be charged and collected, as well as the division to be made between the parties, to be based upon the toll schedule of the Michigan Independent Traffic Association.

[January 5, 1915.]

APPLICATION for interchange of telephonic communication and service; granted.

Appearances: John F. Fitzsimmons for Reading Central Telephone Company; A. H. Dudley for Fayette Rural Telephone Company.

OPINION.

Hemans, Chairman: The complainant is, as its name implies, a corporation organized under the laws of the state of Michigan, supplying telephone service. Its home office is at the village of Reading, county of Hillsdale, from which point its lines radiate into contiguous territory.

No formal answer was filed by the defendant, but from the record made upon the hearing of the matter it appears that the Fayette Rural Telephone Company is a voluntary venture or association of individuals, not incorporated or held together by expressed copartnership agreement. It is an organization of individuals who individually and collectively have constructed lines, installed telephones, and who maintain a switchboard at the village of Jonesville. They rent no telephones, and have no fixed charge for service, but collect an assessment from each person served, to defray the common expenses. The organization has constructed its lines upon the highways, and serves

a comparatively large territory reached by no other telephone facility. It has connection with some twenty-four other organizations of like character, whose telephone users are able to communicate with one another by reason of physical connection of the lines between the various exchanges. All connected organizations conduct their business upon the same basis as the Fayette Rural Telephone Company, their bond of union seeming to be the furnishing of telephone facilities on the basis of so-called free service.

The switchboard of the so-called Fayette Rural Telephone Company has physical connection with the like facility of the Reading Central Telephone Company by means of a line jointly owned by the parties, and over which communication has been and still may be had between the exchanges of the two organizations. Service has been discontinued, however, because of the refusal of the Fayette Rural to receive or transmit messages upon the usual toll basis.

The complaint filed herein seeks the order of this Commission requiring the Fayette Rural Telephone Company, so-called, to accept for transmission through its exchange at Jonesville messages originating within or passing through the exchange of the Reading Central Telephone Company, and to likewise transmit such messages as may originate within its exchange and upon the lines that are connected with its switchboard at Jonesville for persons connected with or beyond the exchange of the complainant company at Reading, for the usual rate of toll charges prevailing throughout the state, and to settle and adjust such charges on such basis as may be prescribed.

The first question presented is as to whether the so-called Fayette Rural Telephone Company, the defendant organization, is such an organization as comes under the jurisdiction of this Commission.

Act No. 206 of the Public Acts of 1913, which confers jurisdiction over the telephone facility upon this Commission, in section 1 provides:

"All persons, corporations, and associations operating telephone lines or exchanges doing a telephone business within the state of Michigan, are hereby declared to be common carriers;

and all laws, so far as applicable, now in force or that may be hereafter enacted, regulating the transportation of persons or property by railroad companies within the state, shall apply with equal force and effect to telephone companies."

Section 2 provides as follows:

"The Michigan Railroad Commission, hereinafter styled 'the Commission,' shall have the general control of all telephones, telephone lines, and telephone companies within the state, and shall investigate any alleged neglect or violation of the laws of the state by any person, copartnership, or corporation doing a telephone business within the state, or by the officers, agents, or employees thereof."

An examination of the act in its entirety discloses that there are no exceptions in it exempting any particular class of telephone companies from its operations, based upon the plan of their organization or their method of doing business. It is the evident purpose of the act to include and to make subject to regulation every person, corporation, or association operating a telephone facility for public use. They are declared to be common carriers, and to be subject to the control and regulation of the Michigan Railroad Commission. There are adjudicated cases in some states exempting so-called rural or farmers' lines operated as is the defendant company, from supervision by the regularly constituted regulating body of the state; but, so far as our investigation goes, such cases turn upon the particular wording of the statute under consideration, which by their terms generally place those companies under regulation which operate their lines for "hire." Such language has been held not to include companies that do business on a purely mutual basis.

The only limitation in the statute of this state is, as an examination of the sections already quoted discloses, that the act shall apply to all persons, corporations, and associations operating telephone lines or exchanges *doing a telephone business*. The phrase, "doing a telephone business," excludes only such facilities as are entirely private in character.

A person, corporation, or association which sets its poles and strings its wires upon the highways, which installs a central switchboard, and which gives means of communication between

its immediate patrons and with those of distant organizations, cannot be said to be a private facility because the cost of its maintenance is apportioned in the form of an assessment. Such an organization is clearly *doing a telephone business*. Although such an organization may be doing business upon the mutual basis, it is doing business affected with a public interest; its tendency is to monopolize its field of operation, for it would be economic waste to duplicate its facilities, and even duplication of lines would give access to only a limited number of its telephone users. It is quite possible that the patrons of such a system may not desire to send messages beyond the limits of their own exchange, but telephone users at a distance may desire to communicate with its patrons, and for that reason, if it occupies the public streets it must recognize the public character of its facilities. A railroad company that refused transportation for all freight and passengers except such as originated upon and that did not pass beyond its line would come far from discharging its public duty, and the same is true of a telephone utility.

Small organizations operating within limited areas and furnishing a service of lesser quality than that demanded in congested centers may find the mutual plan and so-called free service best suited to their needs; but it is readily seen that such a plan of operation cannot be applied to extended or exacting service. Toll lines, and even the exchanges of less populous communities, are constructed at great cost. Some of them can be maintained and operated only by bringing into harmonious action a large number of employees. The capital necessary for the creation of such properties, and the organization necessary for their operation, can be supported only from definite tolls and charges for service. The telephone company or organization that desires to pursue the mutual plan within the sphere of mutual interest should be permitted to do so; but every telephone company or organization is in a sense public, as well as mutual and local, and it must discharge its public function, which is to perform the duties of a common carrier subject to the limitations of its facilities; and in the broader sense this function cannot be performed on the so-called mutual or free service plan, but so far as long distance service is concerned, it must be upon the basis of a fixed toll of general application throughout the terri-

tory served, with definite divisions as between the companies or organizations rendering the service.

From the foregoing it follows that we are justified in finding that the defendant organization is under the jurisdiction of this Commission, and that it should interchange telephonic communication and service with the facilities of the Reading Central Telephone Company by means of the lines and circuits that now form a physical connection between the exchanges of the two facilities at Reading and Jonesville.

The question involving the jurisdiction of this Commission over the defendant organization, the Fayette Rural, was referred by the Commission to the Attorney General, and that official has formally advised the Commission in accordance with the holding herein.

The toll rate to be charged and collected as between the Reading Central Telephone Company and the Fayette Rural Company, as well as the division to be made between the parties of the same, in our opinion should, until the further order of the Commission, be upon the toll schedule of the Michigan Independent Traffic Association, which has application with most independent telephone companies of the state, and is in practical conformity with all other telephone companies operating in this territory.

An order in keeping with the foregoing will be this day entered.

Lawton T. Hemans, Chairman; C. L. Glasgow, Commissioner;
C. S. Cunningham, Commissioner.

MISSOURI PUBLIC SERVICE COMMISSION.

CLAY COUNTY TELEPHONE COMPANY, Complainant,

v.

CHICAGO, MILWAUKEE, & ST. PAUL RAILWAY COMPANY, Defendant, and LIBERTY TELEPHONE COMPANY, Intervener.

[No. 540.]

Service — Telephone — Railroad station — Missouri statute.

The telephone company having in use the largest number of telephones at the local exchange has the largest number of subscribers, with-

in the meaning of a Missouri statute requiring railroad companies to install and maintain in every railroad station where an agent is kept a telephone connected with the local exchange having the largest number of subscribers in city, town, or community in which the station is located.

Public utilities — Railroads — Duty — Installation of telephone.

The mere showing that the subscribers of a telephone company have no means of communicating with a railroad depot is not sufficient to authorize an order compelling the railroad company, in the furtherance of its duty as a common carrier, to install a telephone of the company at the depot.

[January 8, 1915.]

APPLICATION to require defendant to install complainant's telephone in its depot; dismissed.

OPINION.

Bean, Commissioner: I. The Clay County Telephone Company filed complaint against the Chicago, Milwaukee, & St. Paul Railway Company, charging: "That the Clay County Telephone Company has more subscribers than any other exchange in Liberty, Missouri, and that the Clay County Telephone Company served 300 rural subscribers and 200 town subscribers who have no other connection with the C. M. & St. P. R. R. Co. at Liberty, Missouri, also that the Clay County Telephone Company has 760 phones in Clay county that have no other connection except through the Liberty exchange;" and praying that the railway company above named be required to install a telephone of complainant in its depot at Liberty.

Upon application the Liberty Telephone Company was permitted to intervene, and in its intervening petition alleged that it had more subscribers than any other telephone exchange at Liberty, and had installed its telephone service in the depot of the said railway company at Liberty, and that the railway company should not be required to substitute the service of the Clay County Telephone Company for that of intervener.

The defendant railway company, in its answer, alleged that the Liberty Telephone Company had more subscribers than the Clay County Company, and that it had installed a telephone of the former in its depot at Liberty, for which it paid \$2 per month, and asked that the complaint be dismissed.

II. The evidence in the case was heard before Commissioner Bean at Kansas City, Missouri, on the 14th day of December, 1914.

Complainant seeks to require the defendant to install the telephone service of complainant in its depot, for which the charge is \$1.50 for each month, upon the grounds set forth in its complaint.

The legislature of this state in 1911 enacted a statute (see Acts 1911, p. 154) requiring railroad companies to install and maintain in every railroad station where an agent is kept, a telephone having proper connection with the local telephone exchange having the largest number of subscribers in the city, town or community in which said railroad station may be located.

III. It appears from the evidence that the complainant, the Clay County Telephone Company, had in use at its Liberty exchange 644 telephones, and that the Liberty Telephone Company had in use at its Liberty exchange 727 telephones. Therefore, the Liberty Telephone Company had the greater number of subscribers at Liberty within the meaning of the Act of 1911, p. 154, and the complainant is not entitled to relief under the terms of the act.

A witness for complainant testified that 300 of its rural subscribers at Liberty and 200 of its subscribers residing in the town of Liberty would have no means of communicating with the depot of defendant at Liberty other than through its telephone exchange. Complainant relied upon such testimony, together with further evidence that its telephone service, if placed in the depot at Liberty, would be available through connections with the Liberty exchange, to a large number of its subscribers in Clay county other than those named above, as a sufficient showing that its service was reasonably required by the defendant for the public convenience at Liberty, in addition to the telephone service furnished by the Liberty Telephone Company.

It cannot be assumed to what extent the subscribers of the Clay County Telephone Company are engaged in transacting business with the defendant as a common carrier; hence it is held that there has been no showing in this case that the telephone service of the complainant is a reasonable facility which the defendant

should be required to furnish to the public in the discharge of its duty as a common carrier.

The complaint should be dismissed without prejudice. It is so ordered.

Edwin J. Bean, Commissioner.

ORDER.

This case being at issue upon complaint and answer and the petition of intervener, and having been duly heard and submitted by all the parties, and the Commission being fully advised of and concerning the premises, and having filed a report and opinion containing its findings and conclusions, which is made a part hereof, it is now—

Ordered that the complaint herein be and the same is hereby dismissed without prejudice.

NEBRASKA STATE RAILWAY COMMISSION.

IN RE APPLICATION OF THE LYNCH TELEPHONE
COMPANY.

[Application No. 2116.]

Return — Reasonableness.

A general increase in the rates of a farm telephone company is held not justifiable where the record shows that the net yearly return has amounted to 13.7 per cent.

Rates — Contingent increase — Prepayment periods — Discount.

A farm telephone company, whose rates, payable yearly in advance, have yielded a reasonable return, was allowed to increase its rates 25 cents a month, provided a discount of 25 cents per month be made to subscribers who pay their rental charges six months in advance—the company being required to give subscribers fifteen days notice of the date upon which the rentals fall due.

Accounting required.

A farm telephone company which had not kept an accounting of its finances, was ordered, on an application for an increase in rates, to open and keep a set of books to show the operating revenue and expenses.

Depreciation — Reserve — Maintenance.

A farm telephone company, on an application for an increase in rates, was ordered to set aside a sum amounting approximately to 20

per cent of its gross earnings for current maintenance and depreciation replacements.

[January 4, 1915.]

APPLICATION for authority to increase rates; granted, subject to discount.

Appearances: James Binkert, President, and Archie Binkert, Secretary and Treasurer of Lynch Telephone Company.

ORDER.

Hall, Commissioner: June 26, 1914, being the day set for hearing on said application, the matter came on to be heard before Thomas L. Hall, Commissioner, who sat in the city hall at Lynch, Nebraska, on said date for that purpose.

On September 1, 1910, James Binkert and Archie Binkert, his son, traded a farm for what was known as the Gross Telephone Company. The exchange consisted of 225 subscriber's stations, grounded circuit, with magneto system. No inventories were made of the property, or accounting had as to its finances. After the trade, the owners and applicants herein estimated the property to be worth \$8,000, and on September 1, 1910, the partnership, under the name of Lynch Telephone Company, opened up its books with a balancing account of \$8,000, it being the estimated value of the plant, as placed upon it by the owners, with the following rates:

Business, \$1.50 per month, payable yearly in advance;

Residence, \$1.00 per month, payable yearly in advance.

The applicants herein pray for authority to advance the rates to \$1.75 per month, payable monthly in advance, for business phones, and residence phones to \$1.25, payable monthly in advance.

The applicants base their proposed advance on the claim that it is hard to collect rentals for one year in advance, and that if the collections are made for one month in advance it will cost more to make the collections. The testimony of the secretary and treasurer show that the company is prosperous, and that the property, as a whole, is in much better condition than it was on September 1, 1910.

The Commission has on file the annual reports of the company
P. U. R.—5.

for the years 1911, 1912, 1913 and 1914, which have been introduced in evidence and made a part of this hearing.

Said reports show that for the year

1911	Operating earnings	\$3,075.00	
	Expenses, including taxes	1,915.00	
	Net earnings		\$1,160.00
1912	Operating income	\$3,231.50	
	Expenses	1,800.00	
	Net income		1,431.50
1913	Operating income	\$3,144.00	
	Expenses	1,830.00	
	Net income		1,314.00
1914	Operating income	\$3,196.00	
	Expenses	1,832.71	
	Net income		1,363.29
Total net operating income for the four years			\$5,268.79

The company borrowed \$1,500, which was expended for new central office building and new cables within the town limits, of which 888.00 has been paid out of operating income, and leaves available for cash dividends,

		\$4,380.79
or a net income per year of		\$1,095.19

which amounts to 13.7—per cent per year, on the original estimated value of the plant of \$8,000.

There is some testimony by Mr. James Binkert to the effect that he put into the plant \$300, but the books and reports to the Commission do not corroborate this statement. The real complaint seems to be that collections are hard to make, because rentals are payable one year in advance.

The record is insufficient to justify any general increase in rates. Commissions and courts generally, however, have approved of rate schedules providing discounts for prompt payment. Likewise, they have approved a rule calling for the payment of farm line rentals six months or one year in advance.

The present rates are based on a yearly payment in advance. We are of the opinion that six months is a reasonable period to require payment in advance, and in order to stimulate and facilitate prompt payment of rentals and dues, applicant should be allowed to charge and collect \$1.75 per month for business telephones, and \$1.25 per month for farm and residence telephones,

provided, however, that where subscribers pay six months in advance, their bills shall be discounted 25 cents per month, leaving their net rates the same as at present.

It is therefore ordered that the Lynch Telephone Company be, and the same is, hereby authorized to charge and collect the following schedule of rates and charges:—

Business telephones, \$1.75 per month.

Farm and residence telephones, \$1.25 per month.

Provided, however, that where subscribers pay their rental charges six months in advance their bill shall be discounted 25 cents per month on each class of telephones.

It is further ordered that all subscribers electing to pay their rentals six months in advance be given fifteen days' notice of the date upon which said rentals fall due.

It is further ordered that the applicant herein be, and the same is, hereby notified and directed to open and keep a set of books which shall show in detail all revenues accruing and expenses incurred in the operation of its exchange.

It is further ordered that the said applicant be, and the same is, hereby notified and directed to set aside annually out of its earnings not less than \$640, no portion of which amount shall be expended, save and except for current maintenance and depreciation replacements.

Made and entered at Lincoln, Nebraska, this 4th day of January, 1915.

Nebraska State Railway Commission, Henry T. Clarke, Jr.,
Chairman.

NEBRASKA STATE RAILWAY COMMISSION.

**IN RE APPLICATION OF THE TRANS-MISSOURI FREIGHT
BUREAU.**

[Application No. 2206.]

and

**IN RE APPLICATION OF THE UNION PACIFIC RAILROAD
COMPANY.**

[Application No. 2223.]

Dunnage — Definition.

Dunnage consists of the material used by shippers to brace, stay,

support, or protect in transit, goods shipped in bulk, not including barrels, boxes, crates, or other containers, nor materials, such as ice or stoves, used for the protection of perishable goods.

Rates — Allowance for dunnage — Discrimination.

The carriers of Nebraska, upon application to the Commission, were permitted to cancel a rule giving shippers an allowance for dunnage used to protect and support freight shipped in bulk, box, stock, ventilated, or refrigerator cars, upon the ground that it tended to encourage carelessness in packing, and to increase transportation risks, and to create a form of discrimination against shippers tendering goods packed in containers.

[January 16, 1915.]

APPLICATION (No. 2206) for authority to cancel dunnage rule appearing in Trans-Missouri Rules Circular 1-E, I. C. C. No. 305; granted.

APPLICATION (No. 2223) to cancel Item No. 585-A, Supplement No. 12 to Union Pacific Circular G. F. O. No. 1065, rule covering dunnage; granted.

Appearances: For all the carriers, R. C. Fyfe, Chairman Western Classification Committee; for Omaha Commercial Club, E. J. McVann; for Grand Island Commercial Club, A. M. Conners.

Taylor, Commissioner: All the carriers in Nebraska, with the exception of the Union Pacific, parties to Trans-Missouri Rules Circular No. 1-E, I. C. C. No. 305, publish the following rule:

“Dunnage, in Box, Stock, Ventilated or Refrigerator Cars in Nebraska.

“An allowance of actual weight used, but not more than 500 lbs., will be made for dunnage used by shippers, to protect freight in carload, shipped in box, stock, ventilated or refrigerator cars, provided that in no case shall less than the minimum weight applicable to the commodity shipped be charged for. Shippers shall indicate on their shipping instructions the actual weight of the dunnage used, and any weight in excess of 500 lbs. shall be charged for at the rate applicable to the shipment to protect which the dunnage is used.

“Applies only on Nebraska intrastate traffic. (See Application No. 1400.)”

The Union Pacific, which is not a party to the Trans-Missouri Rules Circular, publishes the same rule as Item 585-A, Supplement No. 12, to U. P. Circular G. F. O. No. 1065.

The carriers represented by the Trans-Missouri Freight Bureau, and the Union Pacific, now make application for authority to cancel this rule.

Rule 13-A, Supplement No. 2 to Nebraska Classification No. 1, covers the same subject, and is as follows:—

“An allowance of actual weight, but not more than 500 lbs., will be made for racks, standards, strips, supports, blocks, and dunnage, furnished and used by shippers to protect freight in carloads, shipped in box, stock, ventilated or refrigerator, or on flat or gondola cars, loaded with freight requiring their use. Provided, that in no case shall less than the minimum weight applicable to the commodity shipped be charged for. Shippers shall indicate on their shipping instructions the actual weight of dunnage used, and all weight in excess of 500 lbs. shall be charged for at the rate applicable to the shipment, to protect freight on which dunnage is used.”

The two rules are similar, with the exception that both closed and open cars are covered in the Nebraska Classification rule, whereas the other refers only to closed cars. “Flat or gondola” cars are covered in separate rules by Item 590 in U. P. G. F. O. Circular No. 1065, and Rule 105, Trans-Missouri Rules Circular 1-F, the allowance in either instance being unlimited.

“Dunnage,” as used in this connection, is the material used and furnished by shippers loading their goods in bulk, for the purpose of bracing, staying, supporting, or protecting the same in the cars while in transit. It does not refer to boxes, barrels, crates, or other containers, and no allowance is made for the free carriage of such materials. Neither does it refer to allowances for stoves and linings, ice, and other materials used for the protection of perishable goods.

The position of applicants is that the dunnage allowance encourages inferior and unsafe packing, adds to the transportation risk, and increases the carriers' cost; that in effect it creates a form of discrimination in that it gives a preference to shippers loading their goods in bulk, braced, stayed, or supported in cars,

as against those tendering goods packed in safe and secure containers, such as boxes, barrels, and crates, which give to carriers the maximum protection and the minimum risk and expense. The further contention is that its continuance will invite increasingly numerous demands for the waiving of packing requirements in order to eliminate the cost of packages and reduce the weight of goods, and that it is the nature of the goods shipped and their liability to damage in transit that renders dunnage necessary, rather than the protection of carriers' equipment.

While representatives of certain shippers were present at the hearing held on this application, they offered no evidence and made no objection to the carrier's request. The dunnage allowance is of comparatively recent origin, the rule having been made effective in this state in June, 1912.

A consideration of the testimony offered by Mr. R. C. Fyfe, chairman of the Western Classification Committee, prompts the opinion that the claims of the carriers as outlined above are well founded. The practice permitted to shippers of loading goods in bulk is in itself a privilege that relieves them of the expense and labor of boxing and crating, enables them to expedite loading, and at the same time reduces their freight charges. It does not appear that in addition to these advantages they are entitled to an allowance for the free carriage of the material which makes bulk shipments possible, particularly when such allowance creates a discrimination against the shipper who cannot avail himself of it, and when it increases the liability of risk to the carrier through damage to the goods. That the saving to the shipper through the waiving of the rule requiring boxing or crating is at times substantial, is shown in the following illustration offered by Mr. Fyfe:

"Formerly all pianos were required to be boxed. Some years ago the piano manufacturers came before the Classification Committee with the proposition, which was submitted by Mr. Conway, of the Kimball Company, of Chicago, to handle pianos harnessed in the car, and they stated that it would save them the cost of the boxes and that it enabled them to load more quickly and likewise reduce their freight cost. As an example of the saving to piano men, I figured an example from Omaha to North

Platte, on the basis of a car load of pianos. The weight of eighteen boxes, at the very lowest possible figure, would be 200 pounds per box, and that would be 3,600 pounds. Three thousand six hundred pounds at .604 cents per hundred pounds, the rate from Omaha to North Platte, was figured and it showed a saving in freight cost of \$21.74. The very lowest value that could be placed on the piano boxes would be \$36, making a total saving to the piano manufacturer of \$57.74. Now from that, to get at the actual figures, should be deducted \$10, which is approximately the cost of harnessing and bracing in the car, leaving a net saving of \$47.74."

Under the present damage rule the shipper would also be entitled to the free carriage of 500 pounds of the material used in harnessing the pianos in the car, representing a freight charge of \$3.02. In other words, the shipper loading in bulk has the advantage over the shipper who boxes his pianos of \$50.76 on the car load. In some cases the nature of the article prevents shippers from loading without boxing or crating, while other shippers, handling similar goods, can avail themselves of the privilege. In that event, the one is required to pay transportation charges on the container in which his goods are shipped, while the other is relieved of that expense. The carrier has a direct interest at this point also, in the increased risk occasioned by the bulk loading. The one shipper provides a secure container that insures the safe transit of the goods to their destination, while the other is permitted to employ a method of loading that materially increases the liability of damage. It is undoubtedly the duty of the carriers to provide adequate equipment, suited, so far as is practicable, to the needs and requirements of the traffic, but some portion of the burden rests upon the shipper, to the extent at least of preparing his goods for shipment, so that it may reasonably be expected that they will be transported safely under ordinary conditions. If the carrier permits a method of loading that is less expensive to the shipper, while at the same time assuming greater risk in transporting the commodity, the shipper can hardly expect to be still further favored by a reduction of the net weight of his shipment.

The Interstate Commerce Commission has permitted the can-

celation of the dunnage rule on interstate traffic in southwestern territory. (I. & S. Docket No. 354-30 I. C. C. 538-546.) In its opinion the Commission uses the following language:

"Risk is one of the elements entering into the present-day rate fabric, and innumerable classifications and tariffs throughout the country contain packing and shipping requirements which can have no other justification than the right of the carrier to require the use of substantial and suitable containers and the elimination of hazard by the secure staying of unpacked articles. Carriers are obligated to furnish suitable cars and to receive and transport goods tendered to them in safe shipping condition, but are not obligated to prepare shipments for transportation. Standard box, stock, ventilated and refrigerator cars in good repair will accommodate all of the ordinary and usual needs of shippers, and if more than this is demanded because of the form, nature or peculiar characteristics of goods tendered for conveyance, some obligation must attach to the shipper in connection with the additional demand."

Stating its conclusion, the Commission continues:

"If the placing of blocks, braces, supports and like materials in lieu of packing, crating or boxing of individual units of car-load shipments is essential for the safe transportation of the loads, the materials should be furnished and placed by the shipper. Can it be said, however, that having supplied and installed the requisite dunnage, the shipper may lawfully and should equitably be charged, either in part or in full, for the conveyance thereof at the rates charged for the commodity shipped? There can be no doubt on this record that the primary and most important purpose of the dunnage used in varying forms by the shipping interests here represented is to make the load safe for transportation and to obviate injury to the goods, the prevention of damage to the carriers' equipment or property being a minor consideration. Under these circumstances and in view of the fact that the substitution of dunnage for the more expensive boxes and crates and other packing material in respect of most of the commodities discussed is of advantage to the shipper and reduces the gross weight upon which freight charges must be paid, we think it is not inconsistent that the carriers should receive revenue for the total weight hauled."

There appears to be good reason for continuing the rule in so far as it applies to what is known as open cars. These flat cars are used to transport lumber, poles, pipe, and similar freight, which would not stay on the cars if stakes, braces, or supports were not provided to secure the load. In this class of equipment the carrier does not furnish the necessary facilities for safely conveying the shipment, and it is proper that it should be required to transport the material necessary to make the shipment secure. It sometimes happens, moreover, that the kind of car ordered cannot be immediately supplied, and the shipper, rather than wait longer for the car he wants, accepts a less desirable car, which he can get, and goes to the expense of fitting it. A gondola car, for example, could be used for the transportation of a load of poles without much fitting, but if it were not available, a flat car could be used after it had been equipped with the necessary stakes. In such a case the shipper should not be required to pay for their transportation. Likewise, lumber could be loaded in a box car if an open car was not available and there would be no expense for dunnage.

In view of the foregoing, it is the conclusion of the Commission that the application for the cancelation of the rule is reasonable, and should be granted.

ORDER.

It is therefore ordered that the applicant herein, The Trans-Missouri Freight Bureau, be and the same hereby is, authorized to cancel from Trans-Missouri Rules Circular No. 1-E, I. C. C. No. 305, Rule No. 115, which is entitled, "Dunnage, in Box, Stock, Ventilated, or Refrigerator Cars in Nebraska," same to become effective on and after thirty days from the date of this order.

It is further ordered that the applicant herein, the Union Pacific Railroad Company, be and the same hereby is authorized to cancel from Supplement No. 12, to U. P. Circular G. F. O. No. 1065, Item 585-A, which is entitled, "Dunnage, in Box, Stock, Ventilated, or Refrigerator Cars," same to become effective on and after thirty days from the date of this order.

It is further ordered that, in accordance with the foregoing,

Rule 13 A, Supplement No. 2 to Nebraska Classification No. 1, be, and the same hereby is, amended so as to read as follows:

"An allowance of actual weight, but not more than 500 lbs., will be made for racks, standards, strips, supports, blocks, and dunnage, furnished and used by shippers to protect freight in car loads, shipped on flat or gondola cars, loaded with freight requiring their use. Provided, that in no case shall less than the minimum weight applicable to the commodity shipped be charged for. Shippers shall indicate on their shipping instructions the actual weight of dunnage used, and all weight in excess of 500 lbs. shall be charged for at the rate applicable to the shipment, to protect freight on which the dunnage is used."

Same to become effective on and after thirty days from the date of this order.

Made and entered at Lincoln, Nebraska, this 14th day of January, 1915.

Nebraska State Railway Commission, Henry T. Clarke, Jr.,
Chairman.

Note.—The Nebraska Commission, in permitting the cancelation of a rule making an allowance for dunnage in the case of goods shipped in box, stock, refrigerator, or ventilated cars, follows the Interstate Commerce Commission (see *Re Dunnage Allowances*, 30 I. C. C. Rep. 538 (1914)).

It is to be noted, however, that the State Commission considers an allowance for dunnage reasonable so far as it applies to what is known as open cars.

OHIO PUBLIC UTILITIES COMMISSION.

IN RE APPLICATION OF THE MAHONING COUNTY LIGHT COMPANY.

[No. 287.]

Monopoly — Security issues — Public convenience.

The Public Utilities Commission of Ohio cannot, in the absence of express statutory authority, withhold its consent to an issue of stocks and bonds for the purpose of enabling a competing electric light and power company to acquire property and construct a plant in a certain territory, merely on the ground that the field is already occupied by a company furnishing adequate service, and that therefore no public necessity exists for another utility to furnish a like service.

[January 5, 1915.]

APPLICATION for authority to issue stocks and bonds; granted.

FINDING AND OPINION.

Hughes, Chairman, Marshall and Doty, Commissioners:
On July 14th, 1914, the applicant company filed with the Commission its application for consent and authority to issue \$400,000 of common stock and \$600,000 of first mortgage bonds of said company, alleging in its said application that it is a public service corporation of the state of Ohio, formed for the purpose of generating, producing, selling, leasing and furnishing electricity, steam and other agencies for light, power and heating purposes, and all things incidental thereto, and further sets forth therein that the amount realized from the sale of such stock and bonds was to be used for the following purposes:

(a) To acquire all the property of the Youngstown Heating Company, a public service corporation engaged in furnishing steam for heating purposes in the city of Youngstown, Ohio, subject to the approval by this Commission of the purchase of the property of said the Youngstown Heating Company by the applicant company.

(b) The construction of an electric light and power plant and distributing system in the city of Youngstown, Ohio, the estimated cost of which is Six Hundred and Fifty-eight Thousand, Five Hundred and Ten Dollars.

(c) The payment of interest during construction, amounting to (as near as can be estimated) Thirty Thousand Dollars.

(d) The management during construction, estimated at seven and one-half per centum of the cost of construction.

The application was heard on the twenty-sixth day of August, 1914, at which time the Youngstown and Sharon Street Railway Company, by and through its representative, appeared in opposition to the granting of said application and, on the twenty-ninth day of December, 1914, the said the Youngstown and Sharon Street Railway Company filed with the Commission its written motion for leave to intervene in, and be made a party to this proceeding, and said the Youngstown and Sharon Street Railway Company having, in fact, been heard at the time of the hearing on the application of said the Mahoning County Light Com-

pany, for the purposes of the record was allowed to file such motion for leave to intervene herein and become a party hereto. In said motion, said the Youngstown and Sharon Street Railway Company alleges, that it is a corporation of the state of Ohio; that it has, under the authority of this Commission, acquired by purchase all the property, rights, privileges and franchises formerly owned, operated and exercised by the Youngstown Consolidated Gas and Electric Company in the city of Youngstown and vicinity; what the property so purchased consists of; that said plants so purchased, *for a long time and now are furnishing* electric current for light and power purposes in the city of Youngstown, Ohio, and vicinity; that the plants so purchased by the intervener, as aforesaid, from the Youngstown Consolidated Gas and Electric Company are of the most modern type of construction and equipment and *have* adequate and ample capacity for all present and reasonable future demands in said city and vicinity for electric current for light and power purposes, and that no public complaint has been made as to the capacity of said plant or as to its adequacy, or as to its service or rates.

On January 2d, A. D. 1915, the Commission granted the motion of the Youngstown and Sharon Street Railway Company for leave to intervene and be a party in this proceeding.

The authority to issue stocks and bonds sought by the Mahoning County Light Company in its application in this cause is under and by virtue of section 614-53 of the General Code of Ohio, as amended (103 Ohio Laws, 841), which provides:

"A public utility or a railroad, as defined in this act, may when authorized by order of the Commission and not otherwise, issue stocks, bonds, notes and other evidences of indebtedness . . . when necessary for the acquisition of property, the construction, completion, extension, or improvement of its facilities. . . .

"Provided, however, it shall be the duty of the Commission to authorize on the best terms obtainable, such issues of stocks, bonds and other evidences of indebtedness as shall be necessary to enable any public utility to comply with the provisions of any

contract heretofore made between such public utility and any municipality."

By the intervention of the Youngstown and Sharon street Railway Company and its opposition to the granting of authority by the Commission to the Mahoning County Light Company to issue its stocks and bonds, as prayed for by it in its application, the following question is made an issue:

Has the Public Utilities Commission of Ohio the power to refuse authority to such a public utility or railroad, as defined in the act creating said Commission and defining its powers and duties (103 Ohio Laws, 804), to issue its stocks and bonds under section 614-53, General Code of Ohio, or the laws of Ohio, *on the ground that there is a utility or railroad, as defined in the act, already occupying or operating in any municipality or locality, furnishing adequate like service or commodity as that proposed to be furnished by the utility or railroad applying to the Commission for authority to issue its stock and bonds for the purposes set forth in section 614-53 of the General Code of Ohio?*

The Commission has only such powers as are conferred upon it by law, and hence we must look to the act creating the Commission and enumerating its powers for its authority.

If the Commission finds, as a matter of fact, that a utility, such as the applicant in the case at bar, the Mahoning County Light Company, has legal authority to occupy a certain municipality or locality for the purpose of performing the functions of such a utility, in furnishing a service or commodity in such municipality or locality, then we have no discretionary powers as to granting authority to such applicant to issue its stocks and bonds for the purpose of securing funds to do the things enumerated in section 614-53 of the General Code.

Were the law otherwise than as just stated, it would be in violation of the constitutional rights of possessing and enjoying property.

The theory propounded by counsel for the intervener is that no public necessity exists for another utility to furnish a like service in the same territory where the intervener has already con-

structed and is operating its plant, thereby giving adequate service to the inhabitants of such territory, and hence the Commission should refuse the application of said utility to issue its stocks and bonds, as prayed for.

The Commission is not bound and therefore refrains, at this time, from expressing the wisdom of the legislature in not vesting such a power in the Commission, but now looks to the enumerated powers relative to matters, such as are involved in this case, for the solution of its action in the premises.

The legislature vested this Commission with the authority to grant a certificate, after public hearing of all parties interested, to a telephone company desiring to exercise any permit, right, license or franchise, etc., in any municipality or locality where there is in operation a telephone company furnishing adequate service, if it finds that the exercising of such license, permit, right or franchise is proper and necessary for the public convenience (section 614-52, General Code of Ohio).

The power referred to is the only one of the kind conferred upon this Commission under the laws of Ohio, which goes to show that had the legislature intended to extend that power to other than telephone companies it would have done so by express terms.

It is known to members of this Commission that at the time the present utilities commission act was pending before the 80th General Assembly of Ohio prior to passage, an attempt was made to have the power which the intervener is now seeking to have invoked, in its behalf, by the Commission, made a part of the present law but the same was not included therein, which leads the Commission to conclude that it is without such jurisdiction.

The testimony produced in the hearings in this cause clearly shows the following facts:

(a) That the Mahoning County Light Company is a utility under the law of Ohio.

(b) That said utility is in possession of the legal authority, under a franchise properly owned by it, granted by the city of Youngstown, Ohio, to furnish electrical current to said city and the inhabitants thereof, for light, heat and power purposes.

(c) That said company has filed its petition for authority to issue its stocks and bonds in due form and according to law.

(d) That said authority sought is for the purposes enumerated in the section of the General Code providing for the granting of said authority.

It therefore follows that when a company has brought itself wholly within the law governing this proceeding and the Commission has been satisfied upon all other points, the Commission may not withhold its consent and authority to the issue of stocks and securities on the ground that a like utility is operating in the same locality and will come in competition with the applicant company or that it will be affected in any way by the entrance of a new company into the field.

Consent and authority of the Commission to issue stocks and securities will be given.

The Public Utilities Commission of Ohio. O. H. Hughes, Chairman; C. C. Marshall, E. W. Doty, Commissioners.

Note.—The Commission in its formal order granted the Mahoning County Light Company authority to issue its common capital stock of the total value of \$100,000 and its first mortgage, six per cent gold bonds of the total principal sum of \$530,000, to be sold for the highest price obtainable but for not less than the par value of the common stock and not less than 90 per centum of the par value of said first mortgage bonds. The order also contained the following provisions:

Ordered, That nothing herein shall be considered as a finding by the Commission of the value of the property, for the payment of the purchase price for which a portion of said common capital stock and said first mortgage bonds are herein authorized to be issued, either as to the whole of said property, or of any part, nor as an acquiescence in the values placed upon said property by said companies, nor as an approval of the consideration stipulated. It is further

Ordered, That nothing herein shall be construed as an approval by the Commission of the rates now charged for service by said companies at any of their stations, or in any municipality, or elsewhere, nor as a finding by the Commission that said rates are reasonable and not excessive and not discriminatory. It is further

Ordered, That nothing herein shall be construed as a finding by the Commission that the service of said companies, at any of their stations or in any municipality, or elsewhere, is adequate, efficient or sufficient.

OKLAHOMA CORPORATION COMMISSION.

A. E. DARNELL et al., Complainants,

v.

PIONEER TELEPHONE & TELEGRAPH COMPANY, and the
Deer Creek Mutual Telephone Company, Defendants.

[Order No. 888, Case No. 2125.]

Service — Physical connection of telephone lines — Toll service.

Under the Oklahoma Constitution, the Oklahoma Corporation Commission may prescribe rules and regulations for the physical connection of the lines of a local telephone company with those of another telephone company, furnishing local and long distance toll service in and through the same town, so that long distance messages may be received from and transmitted to the rural and exchange subscribers of the local company.

Apportionment — Earnings — Telephones — Physical connection.

Upon the compulsory physical connection of the lines of a local telephone company with those of another company furnishing long distance toll service through the same town, it was ordered that the local company should receive 12½ per cent of all toll revenue collected for toll traffic originating or terminating on its exchange or rural lines.

Apportionment — Costs — Telephones — Physical connection.

Upon the compulsory physical connection of the lines of a local telephone company with those of another company furnishing long distance toll service through the same town, it was ordered that the expense of making such connection should be borne equally by the two companies.

Rates — Telephones — Physical connection — Toll service.

Upon the compulsory physical connection of the lines of a local telephone company with those of another company furnishing long distance toll service through the same town, it was ordered that the basis for toll line charges to or from the local company's exchange or rural lines should be the same as that to subscribers of the toll line company.

[January 6, 1915.]

APPLICATION to compel physical connection of telephone lines;
granted.

OPINION AND ORDER.

By the **Commission**: A. E. Darnell and others of Arapaho, Oklahoma, filed complaint against the Pioneer Telephone & Telegraph Company and the Deer Creek Mutual Telephone Company.

The complainants allege that both companies above named are public transmission companies for hire, and each under a franchise operates a public telephone system and exchange in the town of Arapaho, Custer County, Oklahoma; that the Pioneer Telephone & Telegraph Company has and operates a long distance toll line in and through said town and is serving the public with long distance telephone connection for hire, and refuses to receive and transmit long distance messages over the lines of the Deer Creek Mutual Telephone Company, and that these two companies have no physical connection with each other in the town of Arapaho, and the people of Arapaho desire physical connection with the two companies for their mutual convenience. Arapaho is one of the few towns in Oklahoma that has two telephone exchanges, and each one without any physical connection with the other. Section 5, Article 9 of the Constitution of Oklahoma provides as follows: "Section 5—All telephone and telegraph lines operated for hire shall each respectively receive and transmit each other's messages without delay or discrimination, and make physical connections with each other's lines, under such rules and regulations as shall be prescribed by law, or by any commission created by this Constitution, or any act of the legislature, for that purpose."

Evidence was taken in this case in Arapaho on September 26th, 1914, by Commissioner Watson, at which time it appeared that a number of subscribers of the Deer Creek Mutual Telephone Company desired physical connection with the Pioneer Telephone & Telegraph Company in order that they could have the benefit of long distance toll service from their homes. It has long been our position that the payment of switching fees by the subscribers of rural lines to exchanges entitles them to be considered on the same basis, so far as toll rates are concerned, as the subscribers within the local exchange area. Since the subscribers of the Deer Creek Mutual Company in Arapaho, and the rural subscribers outside the exchange area that connect therewith, would have the privilege of long distance toll service connections if physical connection between the exchanges was ordered, and the advantages of the subscribers of the Deer Creek Company would accrue to the financial benefit of the Pioneer Telephone & Tele-

graph Company, the Commission believes that the request for physical connection is a reasonable one.

It is therefore ordered that the Pioneer Telephone & Telegraph Company and the Deer Creek Mutual Telephone Company established physical connection with each other in the town of Arapaho for the purpose of handling toll traffic, and the expense of making such connection shall be borne equally by the two companies. The basis for toll line charges to and from the Deer Creek Mutual Telephone Company, either in its local exchange area or on rural lines connected therewith, shall be the same as the rate to subscribers of the Pioneer Telephone & Telegraph Company in Arapaho. The Deer Creek Mutual Company shall receive $12\frac{1}{2}$ per cent of all of the toll revenue collected for toll traffic which originates or terminates on the Deer Creek Mutual Telephone Company's lines or rural lines connected therewith.

This order to take effect on the 1st day of February, 1915.

Corporation Commission, J. E. Love, Chairman, A. P. Watson, Commissioner, Geo. A. Henshaw, Commissioner.

PENNSYLVANIA PUBLIC SERVICE COMMISSION.

IN RE APPLICATION OF THE PERKIOMEN ELECTRIC
TRANSIT COMPANY, A CORPORATION OF THE
STATE OF DELAWARE.

[Application No. 69.]

*Certificate of public convenience — Trackless trolley — Absence of
legislation — Powers of Commission.*

A certificate of public convenience will not be granted by the Pennsylvania Public Service Commission to a foreign corporation to engage in the operation of a trackless trolley within the state of Pennsylvania, in the absence of any provision of the state legislature for the operation of such a trolley over the public roads and highways of the commonwealth.

[Decided January 8, 1915.]

APPLICATION for certificate of public convenience authorizing foreign corporation to do business in the state of Pennsylvania; denied.

The applicant, a Delaware corporation, petitioned for the is-

suance of a certificate of public convenience authorizing it to engage in the business of operating a trackless trolley in the state of Pennsylvania.

The certificate was refused by the Commission on the ground that the business contemplated by the applicant had not been considered by the legislature of this state, and no laws had been passed authorizing such a company to use the highways of the commonwealth for such a purpose. The Commission was also of the opinion that the approval and granting of the certificate was not necessary or proper for the service, accommodation, convenience, or safety of the public, for the reason that the capitalization of such a company would be beyond the control of the Commission.

Tone, Commissioner: The applicant is a corporation of the state of Delaware, and the purpose of its incorporation, briefly stated, is, *inter alia*, the construction and operation of a trackless trolley, and in connection therewith the right to erect and own power plants and distribution lines used in operating the said electric trolleys. The company has registered under the act of June 8, 1911, to do business in the state of Pennsylvania. The present application of the company is to obtain a certificate of public convenience authorizing it to do business within this commonwealth, this certificate being required by the provisions of article 3, section 3 (b) of the public service company law, which provides that upon the approval of the Commission, evidenced by its certificate of public convenience, first had and obtained, and upon compliance with existing laws, and not otherwise, if any such laws there be "permitting such foreign company to exercise its powers and franchises within this commonwealth," it shall be lawful to obtain the right to do business within this commonwealth.

In article 5, section 18, of the public service company law, it is expressly provided that "such approval in each and every such case or kind of application shall be given only if and when the said Commission shall find or determine that the granting or approval of such application is necessary or proper for the service, accommodation, convenience, or safety of the public."

The Commission has examined and considered the testimony

and arguments produced by the applicant to show the necessity and propriety of the approval of this application. The transportation needs of the community and the ability of the applicant to supply the same by its trackless trolley system have been brought to the attention of the Commission in a very thorough and detailed manner and have been carefully weighed by it.

It may be that the installation of such a system would be of benefit to the community, but the proper determination by the Commission of the essential issue above defined in the statute, *viz.*, whether the approval applied for "is necessary or proper for the service, accommodation, convenience, or safety of the public" involves, under the present application, a broader inquiry. It involves the question not merely whether the transportation of the kind offered by such a trackless trolley system is necessary or proper for the accommodation or convenience of the public, but whether such service, rendered in the course of the business proposed to be carried on by the particular applicant corporation, would, in view of the entire absence of legislative regulation of the rights and powers of such a corporation, be proper for the service, accommodation, convenience, or safety of the public.

The commonwealth has adopted a broad policy in relation to the improvement of the public roads and highways in country districts, and large sums are constantly being expended on the construction and maintenance of such public improvements. While the commonwealth has been vigilant in regulating by law the right of street railway companies to use streets and roads, yet the legislature has not clearly indicated the policy of the state in regard to the use of such highways by transportation companies using a means of transportation, such as a trackless trolley system, that was not in contemplation a short time ago. No means of securing to the state an adequate recompense for the right of such transportation companies to use these great public improvements so essential to the best interests of the state has been provided, nor has the legislature defined the corporate rights and powers of such companies on the highways; and until some policy on this question is adopted by the legislature, it is the judgment of the Commission that the doing of business by

such a transportation company, involving such an unregulated use of the highways, is not proper for the service, accommodation, convenience, or safety of the public.

It may be true that the delegated power of this Commission to regulate the exercise of the rights of public service companies is sufficiently comprehensive to include the regulation of the operation of the applicant company, but that regulatory power presupposes, to a very large extent, the definition and limitation by the legislature of the corporate rights and powers of such a company. We have no indication in any act of assembly as to what the legislative policy of the commonwealth is with regard to corporate rights and powers of companies such as the applicant, the purpose of which has apparently not been considered by the legislature. There may be a great many restrictions and conditions that the legislature will desire to adopt on this subject if it is brought before it, but in the present state of the law of the commonwealth, as interpreted by its attorney general, there is no legislative enactment under which a company can be incorporated in Pennsylvania for the purpose of carrying on the trackless trolley business, nor is there any legislative regulation as to the conduct of such business by such a corporation. It thus appears that the applicant desires to obtain from this Commission the right to engage in a business of a character which the laws of Pennsylvania do not as yet authorize her own corporations to carry on. For this very reason the applicant has obtained a charter from the state of Delaware, and asks this Commission to grant it the right to transact the above mentioned business as a Delaware corporation, in pursuance of such Delaware charter, and thus seeks, through the approval of this Commission, to accomplish by indirection that which cannot be done directly, under the existing laws of Pennsylvania.

It is not every foreign corporation that can obtain the right to do business in this state. Corporations may be formed in other states to engage in a business that the legislature of that state deems to be lawful and in accord with the public policy of that state, and yet that business may not be lawful or in accord with the public policy of Pennsylvania.

At the present time the legislature of this commonwealth has

made no provision for the operation of a trackless trolley over the public roads and highways of the commonwealth even by its own corporations. The exercise in this state by a corporation of another state of rights in which the public is so vitally interested should be undertaken only if and when those rights have been considered and defined by the lawmaking body of this commonwealth. Until such action has been taken it is the judgment of this Commission, as above stated, that the approval of the present petition of the applicant foreign corporation would not be proper for the service, accommodation, convenience, or safety of the public.

Irrespective, therefore, of the further fact that, by reason of the incorporation of a public service company in a state other than Pennsylvania, its capitalization is wholly beyond the regulatory control of this Commission, we are of opinion, after careful consideration, that the approval applied for by the applicant in the present case should be denied, and an order will be made accordingly.

This case being at issue upon petitions on file, and having been duly heard and submitted by the parties, and the Commission having, on the date hereof, made and filed of record a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

Now, to wit, January 8th, 1915, it is ordered: That the petitions be and the same are hereby dismissed, and the Certificate of Public Convenience prayed for is refused:

By the Commission, Frank M. Wallace, Acting Chairman.

Note.—The foregoing opinion of the Pennsylvania Commission is interesting as indicating a new kind of transportation company which may come within the jurisdiction of the public utilities commissions, and as showing the limitations of the powers of the commission in respect to the utilities which have not in some way been recognized by the state legislature.

PENNSYLVANIA PUBLIC SERVICE COMMISSION.**IN RE PUBLICATION OF COMMISSION'S RULINGS, REGULATIONS, OR ORDERS BY PUBLIC SERVICE COMPANIES.**

[General Order No. 12.]

Reports — Commission rulings, etc. — Use of, by public service companies.

Public service companies are forbidden to circulate among their patrons or the public, in any written or printed notice or other communication, any ruling, regulation, or order of the Commission, unless an exact copy is set forth at length and the date thereof also stated, and exact copies of all such notices filed with the Commission within three days of the date of issuance thereof.

[January 6, 1915.]

Wallace, Acting Chairman: It having come to the attention of the Commission that certain public service companies have been sending out written or printed notices or other such communications to their patrons, in which they have attributed to the Commission, from time to time, the making of alleged rulings, regulations, or orders which, in point of fact, have not been made by the Commission as represented, and thereby have occasioned misunderstanding, confusion, and inconvenience to their patrons and the public as to various matters, but especially with regard to the time and manner of payment of bills subject to discount:

It is hereby ordered that the above practice shall be discontinued, and that hereafter no administrative ruling, regulation, or order shall, in any such written or printed notice or other communication whatsoever, be stated by any public service company to have been made by the Commission, unless an exact copy of the particular ruling, regulation, or order so referred to is therein set forth at length and the date thereof also stated.

Copies of such rulings, regulations, or orders may be had on application to the secretary of the Commission. Public service companies assume the risk of the accuracy of copies of rulings, regulations, or orders obtained from any other source, and exact copies of all such notices sent by such companies to customers shall be filed with the secretary of the Commission within three days of date of issue thereof.

By the Commission, Frank M. Wallace, Acting Chairman.

WASHINGTON PUBLIC SERVICE COMMISSION.

PUBLIC SERVICE COMMISSION OF WASHINGTON,
Complainant,

v.

PACIFIC POWER & LIGHT COMPANY, Defendant.

[Case No. 1683.]

Valuation — Securities — Segregation.

It was held useless to say how much of the stock and bonds of a public utility were chargeable to the electrical properties, and how much to the balance of the property, inasmuch as such stock and bonds covered the entire property and could not be segregated.

Valuation — Securities — Market value.

The market value of the stock of a public utility company was held to be unascertainable, where, so far as the Commission could determine, the stock was not at the time, and had not recently been, on the market.

Valuation — Going concern.

The electrical property of a public utility was valued as a going concern.

Valuation — Water rights.

In valuing the electrical property of a public utility, allowance was made for the value of water rights.

[January 7, 1915.]

THIS is a proceeding for the valuation of the electric utility properties of the defendant company.

Reynolds, Chairman, Lewis and Spinning, Commissioners:
This cause came on for hearing before the Public Service Commission of Washington, at the city of North Yakima, Washington, on June 15, 1914, at which time and place testimony was introduced. The Commission was represented by Attorney Stephen V. Carey, Assistant Attorney General; the Pacific Power & Light Company was represented by W. W. Cotton, John A. Laing, Leslie Craven, and Englehart & Rigg, its attorneys; the city of North Yakima et al. were represented by Harry E. Wilson and Guy O. Shumate, its attorneys; the city of Kennewick was represented by C. Holcomb, its attorney; the city of Prosser was represented by C. W. Fristoe, its attorney; the city of Pomeroy was represented by E. V. Kuykendall, its attorney; the city

of Pasco by Gerald Ryscek, its attorney; the water users of White Bluffs, Hanford, and other Columbia river towns, were represented by M. M. Moulton, their attorney; the town of Zillah was represented by Walter G. Loewe, its attorney; the city of Waitsburg was represented by Milton O. Pickett, its attorney; the city of Dayton was represented by Leon B. Kenworthy, its attorney.

On December 11, 1914, further testimony was submitted by the Pacific Power & Light Company at a hearing held in the city of Seattle, the company being represented at this hearing by its above-mentioned attorneys, and the interested cities and towns, were represented by attorneys Harry E. Wilson and Guy O. Shumate.

PURPOSE OF PROCEEDING.

The purpose of this complaint and proceeding is to ascertain the following facts with respect to the value of the electric utility properties of the Pacific Power & Light Company located within the state of Washington, or so situated outside of the state that for the purpose of public regulation they must be considered in determining the value of the property used for rendering service within the state.

A large part of the testimony in this case consists of the evidence and reports of the four engineers, Mr. F. S. Burroughs, chief engineer for the Commission; Mr. J. D. Ross of Seattle, retained by the interested cities; Mr. Henry L. Gray, of Seattle, and Mr. Wm. J. Hagenah of Chicago, retained by the defendant company, the Pacific Power & Light Company (hereafter referred to as the company for convenience).

Chapter 182, Session Laws of 1913 of the state of Washington, requires that the Public Service Commission of Washington ascertain the following facts with respect to the property of any public service company, before it shall tend to show the value of the property used by such company for the public convenience:

The cost of construction and equipment and the amount expended in permanent improvements, the proportionate amount of such permanent improvements charged into construction and operating expenses respectively, the present as compared with the original cost of construction, and the cost of reproducing in its present condition the property of every public service company.

Also the amount and present market value of the capital stock and funded indebtedness. Also the relative value of the use to which such property in this state is actually put in the conduct of interstate business and state business respectively. Also the time intervening between the expenditure of money in the cost of construction, and time when returns in the shape of dividends were first received. Also the probable earning capacity under the rates now charged and the sum required to meet fixed charges and operating expenses, and in cases of a company doing interstate business, it shall also ascertain the probable earning capacity of such company upon intrastate business, and the sum required to meet fixed charges and operating expenses on intrastate business, and the relative proportion of intrastate and interstate business, the relative proportion of the operating expenses connected therewith, and the relative proportion of the revenue which should be derived therefrom. Also the density of traffic and of population tributary, and the conditions which will tend to show whether such traffic and population is likely to continue, increase, or diminish. Also whether the expenditures already made by any public service company in procuring its property were such as were justified by the then existing conditions, and such as might reasonably be expected in the immediate future, and whether the money expended by such company has been reasonable for the present needs of the company, and for such needs as may reasonably be expected in the immediate future. Also the total market value of the property of each public service company operating in this state, used for the public convenience within the state.

Witnesses were sworn and examined, and other evidence introduced with respect to the above-mentioned matters and other matters tending to show the value of the property, and the Public Service Commission of Washington, having heard such evidence and arguments thereon, and being fully advised in the premises, does now make the following:

FINDINGS OF FACT.

I. The Pacific Power & Light Company is a corporation incorporated under the laws of the state of Maine, June 16, 1910, for the purpose of consolidating various established properties serving the communities in the Yakima, Walla Walla, and lower

Columbia river valleys in Washington, together with adjacent ones in the states of Idaho and Oregon. It is now engaged in serving electric light and power in the following counties: Klickitat, Yakima, Grant, Franklin, Benton, Walla Walla, Columbia, and Garfield, in Washington, and Umatilla, Wasco, Hood River, and Clatsop, in Oregon. It also serves gas to North Yakima, Walla Walla, and Clarkston, in Washington, to Lewiston, in Idaho, and to Pendleton and Astoria, in Oregon. It serves water for domestic uses to Pasco, Kennewick, Prosser, and North Yakima, and does the street railway business in Walla Walla and Astoria, and, through the Walla Walla Valley Railway Company, whose stock it owns, operates an interurban line from Walla Walla, Washington, to Milton, Oregon. The properties acquired by the company and the date of their acquirement are as follows:

July 1, 1910,	Yakima-Pasco Power Company, Yakima Gas Company, Northwest Light and Water Company, Yakima Valley Power Company.
July 1, 1910,	Columbia Power and Light Company, Northwestern Corporation, Walla Walla, Northwestern Corporation, Pendleton, Wasco Warehouse Milling Company, The Dalles, Lewiston Gas Company, Lewiston, Idaho.
July 1, 1910,	Astoria Electric Company,
Apr. 1, 1911,	Prosser Water Company,
Apr. 1, 1911,	Prosser Power Company,
Apr. 1, 1911,	Tucannon Power Company, Pomeroy,
Apr. 1, 1911,	Dayton Electric Company,
Apr. 1, 1911,	Waitsburg Electric Company,
Apr. 1, 1911,	Hood River Gas and Electric Company,
Apr. 1, 1911,	Klickitat Light and Power Company, Goldendale,
Apr. 1, 1911,	Husum Power Company, White Salmon,
Sept. 30, 1911,	Reservation Electric Company, Toppenish,
June 30, 1912,	Huntsville Light Company.

II. In acquiring the above properties the company assumed the liabilities and underlying bonds as follows:

Walla Walla Gas and Electric Company	\$ 81,000.00
Northwestern Gas and Electric Company	526,000.00
Astoria Electric Company	150,000.00
Yakima Water, Light and Power Company	133,000.00
Northwest Light and Water Company	63,000.00
Yakima Valley Power Company	14,000.00
	\$967,000.00

On the date of this investigation all underlying bonds had been retired either by purchase or exchange for securities of the company.

III. The company furnishes power for the purpose of watering approximately 75,000 acres of land in the Yakima Valley. The estimated population served is about 75,000. The company has 715 miles of electrical distributing system, and 444 miles of high voltage transmission lines.

IV. The electrical system is separated into four separate units; viz., the White Salmon system, the Goldendale system, the Pomeroy system, and the Yakima-Walla Walla system. A brief description of each is herewith given.

• *The White Salmon System.* White Salmon is a small town in Klickitat county, having a population of approximately 1,000 people. Six miles north of White Salmon, on the White Salmon river, the company owns and operates a small hydro-electric plant of 75 K. W. capacity. The power from this plant is transmitted at 6,600 voltage to the town, where a general light and power business is carried on.

Goldendale Electric System. On the Little Klickitat river, about 8 miles west of Goldendale, is a hydro-electric power plant of 150 K. W. capacity. A 6,600 volt line connects the plant with the city of Goldendale, and a branch line runs south to the town of Centerville. A general light and power business is carried on there.

Pomeroy Electric System. On the Tuccannon river, 8 miles southwest of Pomeroy, is the Marengo hydro-electric plant with an installed generating capacity of 150 K. W. A steam auxiliary plant is located at Pomeroy. A 6,600 volt line runs from the Marengo plant to Pomeroy, where a general light and power business is conducted.

Yakima-Walla Walla System. By far the most important unit of the system is the Yakima-Walla Walla electric unit. This system serves all the towns of any size in the counties of Yakima, Benton, Franklin, Walla Walla, Columbia, and Umatilla. There are 390 miles of 66,000 voltage transmission lines, 63 miles of 25,000 voltage, and about 150 miles of 6,600 voltage, rural distribution lines. Some thirty or more towns and cities are served,

among the more prominent of which are Dayton, Walla Walla, Pendleton, Pasco, Kennewick, Sunnyside, Toppenish, and North Yakima. There are seven power plants interconnected, two being hydro-electric, two steam, and three combined hydro-electric and steam.

V. *Stocks and Bonds.* The Commission finds that the amount of stocks and bonds authorized and issued is as follows:

	<i>Authorized</i>	<i>Issued</i>
Common stock	\$ 6,000,000	\$ 6,000,000
Preferred stock	2,000,000	2,000,000
Second preferred stock	1,500,000	1,500,000
Bonds	30,000,000	6,076,000
Total,	\$39,500,000	\$15,576,000

Inasmuch as the stocks and bonds cover the entire property of the company, it would be useless to say how much are chargeable to the electrical properties under consideration, and how much are chargeable to the balance of the property. Therefore they cannot be segregated.

VI. As far as the Commission can determine, the stock is not now and has not recently been, on the market, and therefore it is impossible to arrive at the market value thereof.

VII. *Cost of Property.* Mr. Burroughs, the Commission's engineer, reports the book cost of the property in question to be \$10,680,459.10. This figure he arrived at by apportioning the book cost of the entire property of the company on the basis of the prices found by him to have been paid for the various properties.

The cost of the property to the company as reported by Mr. Burroughs is \$5,563,459.10, based on the prices paid for the various properties as follows:

Northwest Light & Water Company	\$1,500,000.00
Yakima Valley Power Company	}..... 600,000.00
Pasco Light and Water Company	
Columbia Basin Light and Water Company	
Reservation Electric Company, Toppenish	
Prosser Power Company	40,893.23
Prosser Power Company	100,982.24
Walla Walla Gas and Electric Company	}..... 1,081,000.00
Northwest Gas and Electric Company	
Northwest Corporation	
Waitsburg Electric Company	47,733.30
Huntsville Light Company	1,500.00
Dayton Electric Company	103,031.54

Tuccannon Power Company	91,364.90
Klickitat Light & Power Company	45,583.90
Husum Power Company	47,642.42
Pacific Power and Light Company	1,901,727.57

Total	\$5,563,459.10
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The item of \$1,901,727.57 is the amount expended by the company after it acquired the properties, and the balance, or \$3,601,731.53, is what the company paid for the properties taken over.

Mr. Burroughs reports the actual investment in the physical properties as shown by the books of the original companies to be as follows:

Northwest Light and Water Company	\$ 820,430.22
Yakima Valley Power Company	226,816.88
Pasco Light and Water Company	27,959.46
Columbia Basin Light and Water Company	22,149.51
Reservation Electric Company, Toppenish	26,078.87
Prosser Power Company	84,825.35
Walla Walla Gas and Electric Company }	839,045.78
Northwest Gas and Electric Company }	
Northwest Corporation }	
Waitsburg Electric Company	22,500.00
Huntsville Light Company	1,500.00
Dayton Electric Company	64,878.58
Tuccannon Power Company	36,240.73
Klickitat Light and Power Company	32,875.82
Husum Power Company	23,921.64
Pacific Power and Light Company	1,901,727.57
Total	\$4,130,950.41

The company contends that the figure \$5,563,459.10 more nearly represents the cash invested in property than does the figure \$4,130,950.47, basing their contention chiefly on the fact that many of the old books were missing, that there are no records of the Walla Walla Gas & Electric Company and the records of the Waitsburg Electric Company and the Huntsville Light Company were very incomplete. The finding of the exact original cost of a utility property is usually surrounded with many difficulties, and it is very seldom that commissions and engineers can from the old records of the company clearly establish the original cost; and the Commission realizes that in this case there may have been various expenditures made in the earlier years of

some of the companies taken over, which are not susceptible of accurate determination. Therefore the Commission is of the opinion, and so finds, that the cost of the property taken over by the present company, not including working capital, development cost, or water power value, but including the expenditures made by the present company since reorganization, is at least \$4,130,950.41.

IX. *Cost of Reproduction.* The following is the cost of reproduction as found by the Commission's engineer and the company's engineer:

	Burroughs	Hagenah
Real Estate	\$ 305,874.00	\$ 312,907.00
Buildings, Fixtures and Grounds	203,615.00	189,844.00
Hydraulic Power Works	789,097.00	941,393.00
Plant and Substation Equipment	692,181.00	706,063.00
Transmission and Distribution Systems	1,391,240.00	1,623,235.00
Overhead Charges on above	615,263.00	692,107.00
Stores and Working Capital	254,885.00	223,277.00
Total	\$4,252,155.00	\$4,688,826.00

The Commission finds the cost of reproduction to be as follows:

Real Estate	\$ 309,000.00
Buildings, Fixtures and Grounds	195,000.00
Hydraulic Power Works	870,000.00
Plant and Substation Equipment	700,000.00
Transmission and Distribution Systems	1,465,000.00
Overhead Charges on Above	646,000.00
Stores and Working Capital	255,000.00

Cost of Reproduction \$4,440,000.00

From this figure, \$4,440,000.00, there should be deducted the following property which the Commission considers not used or useful in furnishing service:

Real Estate	\$ 69,000.00
Dayton Power Plant	30,000.00
Unused Equipment	60,000.00
Portland Office	24,000.00
Kennewick Stores	97,000.00
Total deductions	\$280,000.00

This leaves a total cost of reproduction less unused property of \$4,160,000. The cost of reproduction new less depreciation is

\$3,770,500. These amounts do not include anything for development cost or going value, nor water power value. Mr. Burroughs calculates the development cost to June 30, 1913, as \$183,383, but in arriving at this figure he used as a basis the cash invested in the property as shown by the books of the various companies. On the same basis, allowing 5 per cent of the cash invested as shown by the books to cover the investment in stores and working capital, the development cost to June 30, 1913, would be \$290,000. Mr. Gray estimates the development cost of the property since its acquisition by the company as \$392,000. Mr. Hagenah estimates the development cost or going value to be \$635,000.

X. Water Power Value. The four engineers, Messrs. Hagenah, Burroughs, Gray, and Ross, all gave testimony as to the value of the water powers owned by the company, and each arrived at his conclusions by following methods more or less known to commissions and engineers as means of measurement of water power values. Mr. Burroughs used what is termed the "capitalized annual saving method;" Mr. Ross used the "steam plant comparison method;" Mr. Gray adopted the method used by Mr. Burroughs, but applied it differently; Mr. Hagenah used what might be termed the "supply and demand method." All of the above methods are fully explained in the testimony in this case. The results arrived at by each engineer is as follows:

Hagenah	700,000.00
Burroughs	000,000.00
Gray	652,033.00
Ross	000,000.00

The question of whether water rights should be valued in rate making cases, if value exists, has apparently been definitely determined in the affirmative in the case of *San Joaquin & K. R. Canal & Irrig. Co. v. Stanislaus County*, 233 U. S. 454, 58 L. ed. 1041, 34 Sup. Ct. Rep. 652. This is a case involving the question of the value of water rights, and Mr. Justice Holmes, who rendered the opinion, says:

"The roadbed of a railroad is devoted to a public use in a stricter sense, yet the title of the railroad remains, and the use, though it may be demanded, must be paid for. In this case it is

said that a part of the water was appropriated before the Constitution went into effect, and that a suit now is pending to condemn more as against a riparian proprietor, for which of course the plaintiff must pay. It seems unreasonable to suppose that the Constitution meant that if a party instead of using the water on his own land, as he may, sees fit to distribute it to others he loses the rights that he has bought or lawfully acquired. Recurring to the fact that in every instance only a few specified individuals get the right to a supply, and that it clearly appears from the latest statement of the Supreme Court of California, *Palmer v. Railroad Commission*, 167 Cal. 163, 138 Pac. 997, that the water when appropriated is private property, it is unreasonable to suppose that the constitutional declaration meant to compel a gift from the former owner to the users and that in dealing with water 'appropriated for sale' it meant that there should be nothing to sell."

XI. The earnings and operating expenses for the year 1912 are as follows:

Gross earnings	\$653,651.09
Operating expenses	286,718.70
Net earnings not including depreciation and interest	\$366,932.39

The earnings and operating expenses for the first six months of the year 1913 are as follows:

Gross earnings	\$319,565.97
Operating expenses	154,618.35
Net earnings not including depreciation and interest	\$164,947.62

XII. After a full consideration of all the testimony in this case, and taking into consideration all the elements of valuation provided by statute, and considering and including the value of the water rights, the Commission finds a fair value of the property used and useful as a going concern on June 30, 1913, to be the sum of \$4,700,000.

Witness the Public Service Commission of Washington this 7th day of January, A. D. 1915.

Public Service Commission of Washington, by C. A. Reynolds, Chairman, Arthur A. Lewis, Commissioner, Frank R. Spinning, Commissioner.

WASHINGTON PUBLIC SERVICE COMMISSION.

PHINNEY AVENUE IMPROVEMENT CLUB, Complainant,

v.

PACIFIC TELEPHONE & TELEGRAPH COMPANY,

Respondent.

[No. 1590.]

Commission — Powers — Business judgment — Telephone prefix.

A public service commission cannot order the discontinuance of the name of a manufacturing city as a telephone prefix applying to a residential district of a neighboring city, on the theory that the residents thereof are inconvenienced and damaged thereby, since the selection of a telephone prefix is a matter of business judgment, with which the Commission has no right to interfere unless the word chosen is offensive.

[January 6, 1915.]

APPLICATION to compel discontinuance of telephone prefix; denied.

OPINION AND ORDER.

By the **Commission**: Certain property owners and residents of the city of Seattle, residing in that part of the city bounded by North and West Fifty-ninth street, North and West Eighty-fifth street, West Green Lake boulevard and Sixth avenue Northwest, have complained of the use of the word "Ballard" as a telephone prefix. It is claimed that the use of the word "Ballard" misleads the public into the belief that all telephones having that prefix are located in the city of Ballard, and that the residents of the Phinney avenue district are inconvenienced and damaged by reason of said fact.

"Ballard" is the name of a city, now a part of the city of Seattle, which is noted for its manufacture of lumber and shingles. "Phinney avenue" is a residential portion of the city of Seattle. It is contended by the plaintiff that the use of the prefix "Ballard" in the Phinney avenue district "prevents the sale of property. The defendant company contends that the word "Ballard" is an excellent prefix; that the word is easy to pronounce, and it also appears from the evidence that it is difficult to select a word adapted to use as a telephone prefix. It was fur-

ther shown by the defendant company that to change the prefix would require an expenditure on their part of about \$1,200. Certain residents of the city of Ballard testified that they preferred the word "Ballard" as a prefix, and that it would impose an expense upon them to have the prefix changed; they also testified that the residential portions of the city of Ballard were more desirable than Phinney avenue. It also appeared that if this change were made, other districts in the city would have reason to ask for the same relief. It further appeared that a greater proportion of the residents of the district where the prefix "Ballard" is used prefer the word "Ballard" as a prefix.

It is the opinion of the Commission that the selection of a prefix by a telephone company is a matter of business management, with which the Commission has no right to interfere, unless the word chosen should in itself be offensive. The name "Ballard" is borne by one of the best known and most respected families in Seattle. The city of Ballard is the residence of many of our most respected citizens. While it is true it is a manufacturing city, it has its residential portion, which commands a view of Puget sound and the Olympics unexcelled by any other portion of Seattle. We do not believe that the word "Ballard" is offensive to anyone in the sense which would warrant this Commission in ordering a change.

It is therefore ordered that the complaint herein be, and it hereby is, dismissed.

C. A. Reynolds, Chairman; Arthur A. Lewis, Frank R. Spinning, Commissioners.

WISCONSIN RAILROAD COMMISSION.

FRANK POSPICHAL ET AL.

v.

MUSCODA MUTUAL TELEPHONE COMPANY.

[Decision No. 389.]

Jurisdiction — Relations between utility's officials and directors.

The Wisconsin Commission has no jurisdiction over the relations between a utility official and the board of directors, unless such relations impair the service or create unreasonable rates.

Service — Standards of telephone service — Cross-talk.

A telephone company was ordered to comply within a reasonable time with the Commission's Standards for Telephone Service Rules (August 13, 1914) requiring such construction as will eliminate cross-talk.

Service — Standards of telephone service — Overloaded lines.

A telephone company, having more than twelve subscribers on certain of its rural lines was ordered to rectify the resulting service conditions by increasing the number of its lines in compliance with the Commission's Standard of Telephone Service Rules (August 13, 1914), providing that the number of subscribers on any line shall not be greater than that consistent with adequate service.

Service — Standards of telephone service — Subscribers' connections.

A telephone company was required to connect subscribers with the line which is geographically best adapted to their service, when additional lines were constructed to relieve overloading as required by the Commission's Standard of Telephone Service Rules.

[January 18, 1915.]

PETITION for improvement of telephone service; improvement ordered.

Appearances: R. M. Orchard for petitioners; J. L. Johns for respondent.

Harlowe and Erickson, Commissioners: The petition, which is signed by forty-six residents of the territory served by the Muscoda Mutual Telephone Company, alleges that the secretary and treasurer of that company assumes to manage all of its affairs without authority from the board of directors, and that the service rendered is inadequate. The Commission is therefore asked to cause an audit of respondent's books to be made, and to take such further action as it deems proper in the premises.

No formal answer was made by the respondent.

Hearings were held at Muscoda on April 9, 1914, and May 8, 1914. R. M. Orchard appeared for the petitioners, and J. L. Johns for the respondent.

At the first hearing, counsel for the petitioners asked that the following subjects be considered in addition to the original complaint:

1. The rate charged for business telephones on metallic circuits.
2. Messenger fees charged to patrons of the local company who use the long-distance service when out of town, and desire

to talk to parties in Muscoda who have a telephone belonging to the local company.

3. The difference in rate charged to subscribers who own their own telephone and renters who own their own telephones.

4. The maintenance of telephones by the respondent for which no rent is paid.

5. Discrimination in collecting rent in advance.

These matters were considered and testimony taken with the consent of the respondent, which was given an opportunity to cross-examine witnesses and introduce testimony in rebuttal at the second hearing.

Considerable testimony was introduced with reference to the official acts of the secretary and treasurer of the respondent company, and as to whether such acts were duly authorized by the board of directors. The Commission has no jurisdiction over the relations between a utility official and the board of directors, unless such relations impair the service or create unreasonable rates; and it does not appear that either condition exists in the present case.

Inasmuch as a considerable time may elapse before the data necessary for a determination of the question of the unreasonableness of respondent's rates can be gathered and passed upon, it is deemed advisable to render a decision at this time with reference to the service questions involved in the complaint. Our decision in the rate matters herein will therefore be held in abeyance.

Witnesses complained that they have experienced difficulty in calling the central operator; that the central operator sometimes breaks into a conversation before it is completed; that "trouble" is not always promptly eliminated; and that certain lines were overloaded. One line was said to be about 16 miles long, serving twenty-one subscribers. Several subscribers testified that their service is satisfactory, and that it has materially improved under the present management.

Our engineer has investigated the service rendered by the respondent, and reports that serious cross-talk was found on the through lines to Avoca and Blue River, and also on the line to Richland Center, which is operated by the respondent, but

not owned by it. These lines are metallic circuits, and the objectionable cross-talk can probably be satisfactorily eliminated by making necessary transpositions. The company should take such action as is necessary to secure the necessary transpositions on its leased line from Muscoda to Richland Center. These changes are necessary for compliance with Rule 1 of the Standards for Telephone Service, fixed in our order of August 13, 1914. 15 W. R. C. R. 1.

Rule 2 of the Standards of Service provides that the number of subscribers on any line shall not be greater than that consistent with adequate service, and in the discussion subsequent thereto it is recommended that under ordinary circumstances rural lines be limited to ten or twelve subscribers. Several of respondent's rural lines serve more than twelve subscribers, and the testimony shows that there is some complaint that the service on such lines is poor by reason of this condition. Steps should be taken, as soon as practicable, to rectify this condition by increasing the number of lines. In making the adjustments necessary for this relief of overloaded lines, care should be taken to avoid discrimination. Subscribers should be connected with the line which is geographically best adapted for their service.

Our engineer reports that the switchboard capacity and the operating force are sufficient to properly handle the existing traffic, and that all calls made by him were answered promptly by the central operator. It appears from the testimony that subscribers have not always reported trouble or irregularities promptly to the proper official of the company. Failure to do so delays repair work, and the company should make an effort to encourage its patrons to report trouble at once.

It is therefore ordered that the respondent, the Muscoda Mutual Telephone Company, make such transpositions on its through metallic lines from Muscoda to Blue River and from Muscoda to Avoca as are necessary to eliminate all objectionable cross-talk, and otherwise comply with the rules of service set forth in our general order of August 13, 1914. 15 W. R. C. R. 1.

May 1, 1915, is considered a reasonable date at which the transpositions herein ordered shall be completed.

Dated at Madison, Wisconsin, this 18th day of January, A. D. 1915.

Railroad Commission of Wisconsin by David Harlowe, Halford Erickson, Commissioners.

WISCONSIN RAILROAD COMMISSION.

HENRY GRANTMAN ET AL.

v.

THERESA UNION TELEPHONE COMPANY.

[Decision No. 390.]

Service — Standards of telephone service — Tests and inspections.

A telephone company rendering inadequate service was ordered to employ such additional help as would enable it to make sufficient and regular service tests and inspections of its lines and apparatus as required by the Commission's Standards of Telephone Service Rules, August 13, 1914.

Service — Standards of telephone service — Investigation of complaints.

A telephone company rendering inadequate service was ordered to employ such additional help as would enable it promptly to investigate and remove all causes of complaint, as required by the Commission's Standards of Telephone Service Rules, August 13, 1914.

Service — Standards of telephone service — Construction of through line.

A telephone company rendering inadequate service was ordered to construct within a reasonable time and to maintain between two points a through line along which few, if any, subscribers' instruments are installed, as required by the Commission's Standards of Telephone Service Rules, August 13, 1914.

Service — Standards of telephone service — Toll stations — Location.

A telephone company rendering inadequate service was ordered to establish within a reasonable time a public toll station at a point on a through line, such station to be so situated that it would be convenient for local and transient toll patrons, as provided for in the Commission's Standards of Telephone Service Rules, August 13, 1914.

[January 18, 1915.]

PETITION for improvement of telephone service; improvement ordered.

Appearances: Henry Grantman for petitioners; Christ Schmaltz for respondent.

Harlowe and Erickson, Commissioners: The petition, which is signed by twenty-six residents of Lomira, alleges that the telephone service rendered by the Theresa Union Telephone Company in that village is inadequate, and requests the Commission to investigate the matter.

The respondent, in an informal letter, takes the position that its telephone service is sufficiently good, and that certain repairs and betterments are being made which will remove cause for complaint.

A hearing was held at Lomira on August 17, 1914, at which Henry Grantman appeared for the petitioners and Christ Schmaltz for the respondent.

Witnesses complained that it is difficult to communicate over respondent's telephone lines and the lines of connecting companies, with Fond du Lac, Milwaukee, or other distant points. Connection is obtained with reasonable promptness, but parties cannot hear each other distinctly. Patrons have frequently been obliged to telegraph from the railway station because a message could not be satisfactorily delivered over the telephone. It was stated that some of the lines are overloaded, and that through service is frequently interfered with by patrons who take down their receivers during the conversation. Some complaint was also made as to the local service within the village of Lomira, especially with reference to "listening in" by other subscribers, and overloaded lines.

The manager of the utility testified that since the complaint a new cable has been installed in Theresa, and that a new circuit has been constructed between Theresa and Lomira, thus reducing the number of subscribers served by one line. He stated that the forty-two subscribers at Lomira are connected with the Theresa exchange by five metallic lines. Long-distance calls from Lomira to Fond du Lac *via* Theresa and over respondent's line to the Fond du Lac exchange of the Wisconsin Telephone Company. Calls to Milwaukee are routed *via* Theresa and Mayville. The manager said that the lines between Theresa and Mayville parallel for a part of the distance a high voltage

transmission line, and that this parallelism interferes with the service. Witnesses conceded that the service has improved since the complaint was filed with the Commission, but insisted that **it is still unsatisfactory.**

In the light of the testimony and upon investigation it is our opinion that the telephone service rendered by the respondent at Lomira is inadequate. The trouble complained of by witnesses is apparently due to conditions on respondent's system, rather than to those on connecting lines. Complaints made to the manager are not always thoroughly investigated, so that the "trouble" may be located and immediately eliminated, nor are sufficient regular tests and inspections of the lines made by the company. The manager does not give his entire time to the affairs of the telephone company, and his assistant is inexperienced in telephone work. Sufficient competent help should be employed so that regular tests and inspections can be made, and trouble promptly located and eliminated. At least one through line, along which few, if any, subscribers' instruments are installed, should be established between Lomira and Theresa, and a toll station provided at Lomira, so situated that it will be convenient for local and transient toll patrons. These improvements are necessary for compliance with the Standards of Telephone Service fixed in our order of August 13, 1914, 15 W. R. C. R. 1.

It is therefore ordered that the respondent, the Theresa Union Telephone Company, employ such additional help as is necessary to enable it to make tests and inspections of its lines and apparatus, and to promptly investigate and remove all causes of complaint; construct and maintain a through line between Theresa and Lomira for toll service; and establish a conveniently located public toll station in Lomira; and otherwise comply with our general order of August 13, 1914, fixing Standards of Telephone Service. 15 W. R. C. R. 1.

May 1, 1915, is deemed a reasonable time for the completion of the toll line and public toll station.

Railroad Commission of Wisconsin by David Harlowe, Halford Erickson, Commissioners.

UNITED STATES SUPREME COURT.

WADLEY SOUTHERN RAILWAY COMPANY

v.

STATE OF GEORGIA.

[No. 27.]

Error to state court — Scope of review — Statutory construction.

A ruling of a state court that an order of the state Railroad Commission, directing a railway company to discontinue the practice of demanding prepayment of freight from one connecting carrier while not exacting it from another, is authorized by a statute requiring railways to furnish customary facilities for the exchange of freight, and empowering the Commission to prevent unjust discrimination, is binding on the Federal Supreme Court on writ of error to the state court.

Constitutional law — Due process of law — Prohibiting discrimination by railway company.

Due process of law is not denied a railway company, contrary to U. S. Const., 14th Amend., by an order of a state Railroad Commission, made under legislative authority, directing the company to discontinue its practice of demanding prepayment of freight from one carrier while not exacting it from another.

Constitutional law — Due process of law — Equal protection of the laws — Excessive penalties.

A state statute under which enormous penalties are imposed upon a railway company for violating lawful administrative orders of the state Railroad Commission is void under U. S. Const., 14th Amend., although such orders are made after full hearing before the Commission, if access to the courts to test the constitutional validity of the Commission's orders is denied, or if the right of review actually given is one of which the carrier may avail itself only at the risk of having to pay such penalties if the order is found to be valid.

Constitutional law — Due process of law — Equal protection of the laws — Excessive penalties.

Authorizing the imposition upon a railway company of a penalty of \$5,000 per day for violating a lawful administrative order of the state Railroad Commission, as is done by Ga. Civ. Code, 1911, § 2667, does not deny the company the equal protection of the laws or due process of law, contrary to U. S. Const., 14th Amend., where, under § 2625 of the Georgia Code, the carrier has the right to a judicial review of the validity of such order by a suit against the Commission.

Constitutional law — Due process of law — Equal protection of the laws — Excessive penalties.

A carrier which, after reasonable notice of the making of an administrative order by the state Railroad Commission, failed to resort to the safe, adequate, and available remedy under Ga. Civ. Code 1911, § 2625,

by which it could test the validity of such order by a suit in the courts against the Commission, but instead attacked its validity when sued under § 2667, for the penalty which that section imposes for violations of such order, and which may be any amount, up to \$5,000 a day, could be subjected to such penalty, where that defense proved unsuccessful, without denying the equal protection of the laws or due process of law guaranteed by the 14th Amendment to the Federal Constitution.

[Argued January 30, 1914. Decided January 11, 1915.]

IN error to the Supreme Court of the State of Georgia to review a judgment which affirmed a judgment of the Superior Court of Jefferson County, in that state, enforcing a penalty imposed by statute upon a railway company for its violation of administrative orders of a state Railroad Commission. Affirmed.

See same case below, 137 Ga. 497, 73 S. E. 741.

Messrs. T. M. Cunningham, Jr., and A. R. Lawton for plaintiff in error.

Mr. James K. Hines and Mr. T. S. Felder, Attorney General of Georgia, for defendant in error.

Statement by Mr. Justice Lamar:

Adrian, Georgia, a station on the Wadley Southern Railway, is 10 miles from Rockledge, where the road connects with the Macon & Dublin R. R., and 27 miles from Wadley, where it connects with the Central of Georgia Railway. In consequence of this connection with both roads, goods could be shipped from Macon to Adrian, over either route. It was, however, to the interest of the Wadley Southern to have such freight routed *via* the Central, because it thereby secured the haul of 27 miles from Wadley to Adrian instead of the 10-mile haul when goods were routed *via* Rockledge. In addition to this, the Central owned all of the stock in the Wadley Southern, and allowed it more than a mileage proportion in the division of the through rate. For these reasons, the Wadley made the Central its preferred connection, and received from it goods for Adrian without requiring the prepayment of freight, while refusing at Rockledge to receive goods shipped from Macon over the Macon & Dublin R. R. unless the charges to Adrian were prepaid. Merchants shipping *via* Rockledge contended that this was an unjust discrimination, and made complaint to the Railroad Commission,

which, after "hearing evidence and argument of counsel," passed an order, dated March 12, 1910, requiring "the Wadley Southern to desist from such discrimination, and on and after the receipt of the order, to afford shippers *via* Rockledge the same facilities for the interchange of freight that was afforded shippers over the line of the Central, *via* Wadley." On March 14, 1910, a copy of this order was received by the Wadley Southern, which, however, did not institute any proceeding to test its validity in the courts of Fulton county having jurisdiction of "suits against the Commission or its orders" (Ga. Code, § 2625). Instead, the company, on April 4, 1910, notified the Commission that it would decline to comply with the order on the ground that it was void. Accordingly, on May 26, 1910,—more than two months after the order was served,—a penalty suit was brought against the carrier by the state, in which it was alleged that, on *divers* days, the Wadley Southern had violated the order of the Commission, and asking that a *single* penalty "not to exceed \$5,000," should be imposed under the terms of the act of August 26, 1907. That statute provides that all corporations and persons subject to the public utility law "shall comply with every order made by the Commission *under authority of law*," and any corporation or person which neglects to comply with such order shall "forfeit to the state of Georgia not more than \$5,000 for each and every offense, the amount to be fixed by the presiding judge. . . . Every violation . . . of any such order shall be a separate and distinct offense," and, "*in case of the continued violation, every day the violation thereof takes place shall be deemed a separate and distinct offense.*"

In its answer to this penalty suit the Wadley Southern denied that it had been guilty of any unjust discrimination, and contended that the order of the Commission, and the statute, on which it was based, in violation of the provisions of the 14th Amendment, took property without due process of law, and also that the penalty statute operated to deny the carrier the equal protection of the law. In the trial before a jury there was testimony on the question as to whether there had been any discrimination and whether any difference in treatment was not justified by the difference in conditions. There was also evi-

dence tending to show that the business of some shippers, through Rockledge, had suffered in consequence of the delay and expense incident to the requirement that freight on goods consigned to Adrian should be prepaid at Wadley. The jury returned a verdict in favor of the state, and the judge imposed a fine of \$1,000 on the defendant. The case was then taken to the supreme court of Georgia, where the judgment was affirmed (137 Ga. 497, 73 S. E. 741), and the case is here on a writ of error, which raises the question as to whether the order and the statute under which it was made violate the provisions of the 14th Amendment.

Mr. Justice Lamar, after making the foregoing statement of facts, delivered the opinion of the court:

1. As a general rule, the carrier has the option to demand payment of freight in advance or on delivery. And, as there is a lien on the goods to secure the payment of charges, it is often a matter of indifference whether the freight is collected at the beginning or at the end of the transportation. The law has therefore always recognized that the company could exercise the one option or the other, according to the convenience of the parties, the course of trade, the sufficiency of the goods to pay the accruing charges, and other like considerations.

2. What was true between carrier and shipper was likewise true between carrier and its connections. But there is a conflict in the authorities as to how far this common-law right has been modified by those statutes which, while not requiring absolute uniformity, do prohibit unjust discrimination. On the one hand, it is argued that the carrier has the right to make connections, establish joint routes and through rates for the purpose of facilitating and increasing its business. As an incident of this right it is said that the carrier may enforce the common-law rule and accept goods with or without the prepayment of freight, its decision being determined by the relation between the two companies, the amount of business interchanged, the solvency of the carrier against which the balance generally exists, the latter's promptness in settlement, and other like matters which, while aiding some of the carriers, do not increase the rates charged to the shipper in whose interest the laws against discrimination

have been passed. Among the cases which hold that such difference in treatment is not an unjust discrimination, prohibited by statute, is *Gulf, C. & S. F. R. Co. v. Miami S. S. Co.* 30 C. C. A. 142, 52 U. S. App. 732, 86 Fed. 407. There the circuit court of appeals for the fifth circuit held that, under the interstate commerce law, a common carrier might demand prepayment from one connection and not from another. Cf. *Atchison, T. & S. F. R. Co. v. Denver & N. O. R. Co.* 110 U. S. 668, 28 L. ed. 292, 4 Sup. Ct. Rep. 185. A different view of the question has been taken by other courts (*Adams Exp. Co. v. State*, 161 Ind. 328, 67 N. E. 1033), including the supreme court of Georgia, which, in the present case, held that the statute requiring railroads to furnish customary facilities for the interchange of freight, empowering the Commission to prevent unjust discrimination, authorized that body to pass an order directing the Wadley Southern R. R. to discontinue the practice of requiring the Macon & Dublin Railroad to prepay freight to Adrian, while making no such demand from the Central Railway. This construction of the state statute is binding here, and leaves for consideration the question as to whether such an order violated the provisions of the 14th Amendment.

3. On that branch of the case the Wadley Southern has made many assignments of error. It contends, in effect, that without due process of law the order deprives it of the liberty of contract; takes from it a valuable right of property, and deprives it of the profit it could have made in the exercise of the long-recognized common-law right to demand prepayment of freight from one connection without being compelled to make a similar demand from all other connections.

The section of the Code under which the order was made did not expressly provide for notice and an opportunity to be heard; but the supreme court of Georgia held that it must be construed in connection with other parts of the railroad commission law which did contain such provisions. As said in *Louisville & N. R. Co. v. Garrett*, 231 U. S. 313, 58 L. ed. 242, 34 Sup. Ct. Rep. 48: "It may be assumed that the statute . . . forbade arbitrary action; it required a hearing, the consideration of the relevant statements, evidence, and arguments submitted, and

a determination by the Commission" as to whether the discrimination complained of was unjust. "But on these conditions being fulfilled . . . the appropriate questions for the courts would be whether the Commission acted within the authority duly conferred by the legislature . . . ; whether the Commission went beyond the domain of the state's legislative power and violated the constitutional rights of property by imposing confiscatory requirements." The Georgia court has likewise held that where the statute gave the Commission jurisdiction of the subject, its orders are binding unless shown to have been unreasonable, or to have violated some statutory or constitutional right. *Railroad Commission v. Louisville & N. R. Co.* 140 Ga. 817 (6a), 836, — L.R.A.(N.S.) —, 80 S. E. 327.

In this case the Commission dealt with a practice found to be unjustly discriminatory, but the order did not, as claimed, interfere with the carrier's legitimate right of management nor deprive it of any right of contract. It did not require the Wadley road, either at Rockledge or at Wadley, to receive, without prepayment of freight, goods whose value was insufficient to pay charges if the consignee should decline to accept them on arrival. Neither did it deprive the Wadley Southern of the right to solicit and encourage shipments *via* the Central. The order only prohibited a practice which had proved so preferential to some shippers and communities and so harmful to others as to amount to unjust discrimination. And while the Wadley Southern had the right to increase its earnings by encouraging shipments over the Central Railway so as to secure the longer haul and greater than mileage proportion of the joint rate, yet that right had to be exercised in subordination to the command of the statute prohibiting unjust discrimination. The supreme court of Georgia has ruled that the order was made in compliance with the requirements of the statute, and was not unreasonable or arbitrary. That decision is controlling so far as the state law is concerned, and there is, of course, nothing in the provisions of the Federal Constitution which prevents the states from prohibiting and punishing unjust discrimination of its patrons by a public carrier.

4. The Wadley Southern insists, however, that even if the Commission had the power to make the order, the judgment im-

posing a fine of \$1,000 for its violation should nevertheless be set aside for the reason that the statute—authorizing so enormous a penalty as \$5,000 a day for violating lawful orders of the commission—operated to prevent an appeal to the courts by the carrier for the purpose of determining whether the order was lawful, and therefore binding; or arbitrary and unreasonable, and therefore invalid. In support of this contention it cites *Ex parte Young*, 209 U. S. 163, 52 L. ed. 730, 13 L.R.A.(N.S.) 932, 28 Sup. Ct. Rep. 441, 14 Ann. Cas. 764; *Willcox v. Consolidated Gas Co.* 212 U. S. 53, 53 L. ed. 400, 48 L.R.A.(N.S.) 1134, 29 Sup. Ct. Rep. 192, 15 Ann. Cas. 1034.

It is, however, contended that those cases related to penalties for charging rates higher than those which had been established by the legislature without any hearing having been given to the carriers as to what were reasonable rates, and are not applicable to a case like this, where the order was made after a full hearing had been given by the Commission to the *Wadley Southern*.

This contention would have been well founded if this and other hearings of a like nature before the Commission had resulted in orders which had the characteristics of a final judgment. But this was not so, for they were not conclusive. *Chicago, M. & St. P. R. Co. v. Minnesota*, 134 U. S. 418, 458, 33 L. ed. 970, 981, 3 Inters. Com. Rep. 209, 10 Sup. Ct. Rep. 462, 702. Their lawfulness was treated by the Georgia court in the present case as open to inquiry, when the company was sued for the penalty. The question of their validity was also open to inquiry, in equity proceedings, in the state court, where they would have been set aside if found to be arbitrary and unreasonable, or to have violated some statutory or constitutional right. *Railroad Commission v. Louisville & N. R. Co.* 140 Ga. 817 (6a), 836, — L.R.A. (N.S.) —, 80 S. E. 327; *State v. Western & A. R. Co.* 138 Ga. 835, 76 S. E. 577; *Southern R. Co. v. Atlantic Sand & Supply Co.* 135 Ga. 50, 68 S. E. 807. Such orders were also subject to attack in the Federal courts on the ground that the party affected had been unconstitutionally deprived of property. *Louisville & N. R. Co. v. Garrett*, 231 U. S. 313, 58 L. ed. 242, 34 Sup. Ct. Rep. 48, and cases cited. And this right to a judicial determination exists whether the deprivation is by a rate statute—passed

without a hearing (as in the *Young and Consolidated Gas Cases*); or by administrative orders of a commission, made after a hearing (as in the *Garrett Case*, *supra*). For rates made by the general assembly, or administrative orders made by a commission, are both legislative in their nature (*Garrett Case*, *supra*; *Grand Trunk Western R. Co. v. Railroad Commission*, 221 U. S. 403, 55 L. ed. 787, 31 Sup. Ct. Rep. 537), and any party affected by such legislative action is entitled, by the due process clause, to a judicial review of the question as to whether he has been thereby deprived of a right protected by the Constitution. *Chicago, M. & St. P. R. Co. v. Minnesota*, 134 U. S. 118, 458, 33 L. ed. 970, 981, 3 Inters. Com. Rep. 209, 10 Sup. Ct. Rep. 462, 702; *Chicago, M. & St. P. R. Co. v. Tompkins*, 176 U. S. 174, 44 L. ed. 420, 20 Sup. Ct. Rep. 336; *Prentiss v. Atlantic Coast Line Co.* 211 U. S. 210, 53 L. ed. 150, 29 Sup. Ct. Rep. 67; *Missouri P. R. Co. v. Nebraska*, 217 U. S. 207, 54 L. ed. 731, 30 Sup. Ct. Rep. 461, 18 Ann. Cas. 989; *Washington ex rel. Oregon R. & Nav. Co. v. Fairchild*, 224 U. S. 510, 56 L. ed. 863, 32 Sup. Ct. Rep. 535; *San Joaquin & K. R. Canal & Irrig. Co. v. Stanislaus County*, 233 U. S. 459, 58 L. ed. 1046, 34 Sup. Ct. Rep. 652; *Bacon v. Rutland R. Co.* 232 U. S. 134, 58 L. ed. 538, 34 Sup. Ct. Rep. 283; *Detroit & M. R. Co. v. Michigan R. Commission*, 235 U. S. 402, 59 L. ed. —, 35 Sup. Ct. Rep. 126.

The methods by which this right to a judicial review are secured vary in different jurisdictions. In some states there is a provision that within a designated time the order may be reviewed by the courts on the evidence submitted to the commission. *Washington ex rel. Oregon R. & Nav. Co. v. Fairchild*, 224 U. S. 510, 56 L. ed. 863, 32 Sup. Ct. Rep. 535; *State ex rel. Railroad Commission v. Oregon R. & Nav. Co.* 68 Wash. 160, 167, 123 Pac. 3; *Seward v. Denver & R. G. R. Co.* 17 N. M. 557, 46 L.R.A.(N.S.) 242, 131 Pac. 980. Cf. *Oregon R. & Nav. Co. v. Campbell*, 173 Fed. 957, 989. In others, by proceedings in equity. In the Federal courts the method of procedure, when administrative orders are attacked as unconstitutional, is now regulated by § 266 of the Judicial Code [36 Stat. at L. 1162, chap. 231], as amended (37 Stat. at L. 1014, chap. 160, Comp. Stat. 1913, § 1243). But in whatever method enforced, the right to a

judicial review must be substantial, adequate, and safely available; but that right is merely nominal and illusory if the party to be affected can appeal to the courts only at the risk of having to pay penalties so great that it is better to yield to orders of uncertain legality rather than to ask for the protection of the law.

5. As statutes establishing railroad commissions and providing penalties for violations of legislative orders are of recent origin, the cases discussing the subject are comparatively few. See *Mercantile Trust Co. v. Texas & P. R. Co.* 51 Fed. 529 (4), 549 (14, 15) (1892); *Louisville & N. R. Co. v. McChord*, 103 Fed. 225 (1900); *Cotting v. Kansas City Stock Yards Co.* (*Cotting v. Godard*) 183 U. S. 101, 46 L. ed. 105, 22 Sup. Ct. Rep. 30 (1901); *Consolidated Gas Co. v. Mayer*, 146 Fed. 154 (1906); *Ex parte Wood*, 155 Fed. 190 (1907); *Consolidated Gas Co. v. New York*, 157 Fed. 849 (1907); *Ex parte Young*, 209 U. S. 123, 52 L. ed. 714, 13 L.R.A.(N.S.) 932, 28 Sup. Ct. Rep. 441, 14 Ann. Cas. 764 (1908); *Willcox v. Consolidated Gas Co.* 212 U. S. 53, 53 L. ed. 400, 48 L.R.A.(N.S.) 1134, 29 Sup. Ct. Rep. 192, 15 Ann. Cas. 1034 (1909); *Missouri P. R. Co. v. Nebraska*, 217 U. S. 207, 54 L. ed. 731, 30 Sup. Ct. Rep. 461, 18 Ann. Cas. 989 (1910) (building spur tracks); *Missouri P. R. Co. v. Tucker*, 230 U. S. 340, 349, 57 L. ed. 1507, 1510, 33 Sup. Ct. Rep. 961 (1913); *Bonnett v. Vallier*, 136 Wis. 193, (15, 16) 17 L.R.A.(N.S.) 486, 128 Am. St. Rep. 1061, 116 N. W. 885; *Coal & Coke R. Co. v. Conley*, 67 W. Va. 132, 67 S. E. 613, and the present case of *Wadley Southern R. Co. v. State*, 137 Ga. 497, 73 S. E. 741.

These cases do not proceed upon the idea that there is any want of power to prescribe penalties heavy enough to compel obedience to administrative orders, but they are all based upon the fundamental proposition that under the Constitution penalties cannot be collected if they operate to deter an interested party from testing the validity of legislative rates or orders legislative in their nature. Their legality is not apparent on the face of such orders, but depends upon a showing of extrinsic facts. A statute, therefore, which imposes heavy penalties for violation of commands of an unascertained quality is, in its nature, somewhat akin to an *ex post facto* law, since it punishes for

an act done when the legality of the command has not been authoritatively determined. Liability to a penalty for violation of such orders, before their validity has been determined, would put the party affected in a position where he himself must, at his own risk, pass upon the question. He must either obey what may finally be held to be a void order, or disobey what may ultimately be held to be a lawful order. If a statute could constitutionally impose heavy penalties for violation of commands of such disputable and uncertain legality, the result inevitably would be that the carrier would yield to void orders, rather than risk the enormous cumulative or confiscatory punishment that might be imposed if they should thereafter be declared to be valid.

The first case which deals with the question is *Mercantile Trust Co. v. Texas & P. R. Co.* 51 Fed. 529 (4), 549 (14, 15), decided in 1892. There statutory provisions imposing penalties tending to embarrass a party in appealing for protection against taking property without due process of law were held to be void. In *Cotting v. Kansas City Stock Yards Co.* (*Cotting v. Godard*) 183 U. S. 101, 46 L. ed. 105, 22 Sup. Ct. Rep. 30 (1901), it was pointed out that an act which opened the doors of the courts, but placed upon the litigant a penalty for failure to make good his defense, which was so great as to deter him from asserting that which he believed to be his right, was tantamount to a denial of the equal protection of the law.

Later the matter was elaborately discussed, most carefully considered, and finally decided in *Ex parte Young*, 209 U. S. 123, 52 L. ed. 714, 13 L.R.A.(N.S.) 932, 28 Sup. Ct. Rep. 441, 14 Ann. Cas. 764, where a statute fixed rates, and, though it afforded no opportunity for a judicial hearing to determine whether the rates were confiscatory, yet imposed heavy and cumulative penalties for collecting other than those statutory rates. Those rates had not been established in pursuance of a plenary power of the legislature, but, in view of constitutional limitations, the rates were valid only if they were found to be reasonable. Whether they were reasonable or not was not apparent on the face of the statute, but was dependent upon the proof of extrinsic facts. How doubtful and uncertain that then was is illustrated by the fact that in the *Minnesota Rate Cases* (*Simpson v.*

Shepard) 230 U. S. 472, 473, 57 L. ed. 1570, 1571, 48 L.R.A. (N.S.) 1151, 33 Sup. Ct. Rep. 729, these legislative rates were subsequently held to be confiscatory as to some carriers, and as to others not confiscatory.

It was in the light of the fact that the penalty was imposed for charging other than those statutory rates, whose reasonableness was a matter of doubt and uncertainty, that this court in the Young Case, speaking through Mr. Justice Peckham, pointed out that a law which in terms or by the operation of deterrent penalties made statutes or orders of a commission conclusive as to the sufficiency of rates would be unconstitutional. He summed up the discussion as follows: "It may, therefore, be said that when the penalties for disobedience are by fines so enormous and imprisonment so severe as to intimidate the company and its officers from resorting to the courts to test the validity of the legislation, the result is the same as if the law, in terms, prohibited the company from seeking judicial construction of laws which deeply affect its rights." Like views were expressed as to the invalidity of the heavy penalties involved in the Consolidated Gas Case, 212 U. S. 53, 53 L. ed. 400, 48 L.R.A.(N.S.) 1134, 29 Sup. Ct. Rep. 192, 15 Ann. Cas. 1034. But the penalty provisions were separable, and their invalidity did not defeat the balance of the statute (54).

The Young and Consolidated Gas Cases both related to rate statutes, while in *Missouri P. R. Co. v. Nebraska*, 217 U. S. 196, 207, 54 L. ed. 727, 731, 30 Sup. Ct. Rep. 461, 18 Ann. Cas. 989, the statute imposed a fine for the carrier's failure, on demand, to construct spur tracks to elevators. After showing that if the absolute requirement of the statute to build was to be construed as being applicable only when the demand was reasonable, this court said that even on that construction the railroads must refrain from paying "at the peril of a fine, if they turn out wrong in their guess that in the particular case the court will hold the demand not authorized by the act. If the statute makes the mere demand conclusive, it plainly cannot be upheld. If it requires a side track only when the demand is reasonable, then the railroad ought, at least, to be allowed a hearing in advance to decide whether the demand is within the act."

In *Missouri P. R. Co. v. Tucker*, 230 U. S. 340, 349, 57 L. ed. 1507, 1510, 33 Sup. Ct. Rep. 961, the question was presented in still a different aspect. The statutory rate on the shipment of oil involved in that case was \$12 a barrel. The act provided that if the carrier charged in excess of such rates it should be liable to any person injured in the sum of \$500 as liquidated damages, to be recovered by an action in any court of competent jurisdiction. The carrier, instead of charging the statutory rate of \$12, charged the old rate of \$15.02, and the shipper sued to recover \$500 as damages for collecting \$3.02 too much. The act made no provision for a hearing in advance to determine whether the statutory rate of \$12 was reasonable. The state court, however, held that as the statute did not forbid such judicial investigation, the carrier had the right, when sued for a penalty, to defend by showing that the statutory rates were unreasonable. But, as was pointed out in the decision of this court, the right to a hearing by way of defense after the \$15.02 had been collected failed to recognize "the real plight of the carrier" (349). For, when the oil was tendered for shipment, it had to be accepted at the rate of \$12, and thus be illegally deprived of \$3.02 if the statutory rate of \$12 was confiscatory; or else, the carrier had to charge its existing rate of \$15, and run the risk of having to pay more than a hundred times the amount of the overcharge if the new \$12-rate was ultimately sustained. Of course the right to make a defense, at the risk of having to pay such an enormous penalty, was merely illusory. For, if such penal statutes were indeed constitutional, the carrier, in every instance, would submit to the deprivation of some of its property, under a rate of doubtful validity, rather than run the risk of paying out all of its property by way of penalties imposed in the event the rate should ultimately be sustained.

The supreme court of Wisconsin in *Bonnett v. Vallier*, 136 Wis. 123 (15, 16), 17 L.R.A.(N.S.) 486, 128 Am. St. Rep. 1061, 116 N. W. 885, for the same reason, held a penalty statute void which imposed cumulative fines for failing to comply with indefinite and uncertain regulations as to the construction of tenement houses.

The question also was carefully considered in *Coal & Coke R.*

Co. v. Conley, 67 W. Va. 132, 67 S. E. 613, where it was held that enormous and accruing penalties could not be imposed for charging more than statutory rates of uncertain reasonableness.

6. In the light of this unbroken line of authorities, therefore, a statute like the one here involved (under which penalties of \$5,000 a day could be imposed for violating orders of the Commission) would be void if access to the courts to test the constitutional validity of the requirement was denied; or, if the right of review actually given was one of which the carrier could not safely avail itself.

In considering that question in the present case, the constitutionality of the act involved is not to be decided by the conduct of the plaintiff in error, nor by the fact that the state only asked a penalty for one day's disobedience instead of many. Neither can the statute be construed as a single legislative act. It must be treated as part of a system of laws creating the Railroad Commission, defining its powers, and subjecting it to suit.

This point is brought out in the statement of the brief of the attorney general and counsel for the state, wherein it is said that "the safeguards thrown around persons and corporations affected by this [penalty statute] are such as to rob it of the charge of imposing such enormous and grossly excessive penalties as to render it unconstitutional. In the first place, such persons and corporations are entitled to a hearing before the Commission [a contention already discussed]. And, in the second place, provision is made for the institution of suits against the Railroad Commission of Georgia when its acts are illegal or unconstitutional (Civil Code [Ga.] 1911, § 2625)." From an examination of that section of the Code it is quite clear that it recognizes the right to a judicial review of administrative orders. Until it has been given a contrary construction by the state court, it must be here construed in such a way as to leave it valid, and as conferring that sort of right which furnishes the adequate and available remedy which meets the requirement of the Constitution. Any other construction would not only impute to the legislature an intent to deny the equal protection of the law, and to permit the carrier to be deprived of property without due process of law, but it would operate to nullify the penalty section as a whole. Giving,

then, § 2625 that construction which makes it constitutional, and it appears that the laws of Georgia gave to the Wadley Southern R. R. Co. the right to a judicial review of the order of March 12, 1910, by a suit against the Commission.

7. The only question, then, left for determination, is whether, in view of such right, the penalty can be collected for the violation of an order not known to be valid at the date of the disobedience sought to be punished. On that question, little can be found in the books. But on principle, and on the authority of all that has been said on the subject, there is no room to doubt the power of the state to impose a punishment heavy enough to secure obedience to such orders after they have been found to be lawful; nor to impose a penalty for acts of disobedience, committed after the carrier had ample opportunity to test the validity of administrative orders and failed so to do.

In *Cotting v. Kansas City Stock Yards Co.* Justice Brewer first pointed out that there might be a distinction between punishing for acts done before and for those done after the validity of the rate statute had been settled, saying:

"It is doubtless true that the state may impose penalties such as will tend to compel obedience to its mandates by all, individuals or corporations; and if extreme or cumulative penalties are imposed only after there has been a final determination of the validity of the statute, the question would be very different from that here presented."

Another case dealing more directly with the question is that of *State ex rel. Railroad Commission v. Oregon R. & Nav. Co.* 68 Wash. 160, 123 Pac. 3. The act there under consideration imposed a punishment for violating orders of the Commission, but gave the carrier adequate and available remedy by conferring upon it the right to a hearing in court as to their legality, otherwise it was to be treated as conclusive. *Washington ex rel. Oregon R. & Nav. Co. v. Fairchild*, 224 U. S. 510, 56 L. ed. 863, 32 Sup. Ct. Rep. 535. In a suit for the recovery of the statutory penalty for failing to build a station, as required by the Commission, the court said: "The railroad company having failed to review the order, as it was permitted to do under the act, the or-

der became, in the language of the statute, 'final and conclusive.'
..."

Coal & Coke R. Co. v. Conley, *supra*, contains a very full discussion of the subject. In that case the statute imposed a penalty for charging rates other than those prescribed in a legislative act, which, however, was altogether silent upon the subject of a judicial review as to the reasonableness of the rates. The court recognized that if that silence was to be construed into a denial of the right to a hearing in court, the penalty provision would be void. It held, however, that the failure of the penalty statute to say anything about the right of review could not be construed into a denial of that right. That conclusion, and the further holding that penalties could not accrue while the question of the validity of the rates was being determined in appropriate judicial proceedings instituted in a court of equity for that purpose, are specially applicable here. For the Georgia Code, instead of being silent on the subject, contains a section which punishes a violation of "lawful orders," and another provision, in the same chapter, which expressly contemplates that proceedings may be brought against the Commission to test the validity of its orders.

If the Wadley Southern Railroad Company had availed itself of that right, and—with reasonable promptness—had applied to the courts for a judicial review of the order, and if, on such hearing, it had been found to be void, no penalties could have been imposed for past or future violations. If, in that proceeding, the order had been found to be valid, the carrier would thereafter have been subject to penalties for any subsequent violations of what had thus been judicially established to be a lawful order—though not so in respect of violations prior to such adjudication.

But, where, as here, after reasonable notice of the making of the order, the carrier failed to resort to the safe, adequate, and available remedy by which it could test in the courts its validity, and preferred to make its defense by attacking the validity of the order when sued for the penalty, it is subject to the penalty when that defense, as here, proved to be unsuccessful.

The judgment of the Supreme Court of Georgia is affirmed.

UNITED STATES SUPREME COURT.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, App't.,

v.

LAURENCE B. FINN, Green Garrett, and William Klair, Individually and as Constituting the Railroad Commission of Kentucky, et al.

[No. 546.]

Evidence — Sufficiency — Rate-making order.

Evidence that a carrier had voluntarily established comparatively low special rates on distillery supplies, and had maintained them for many years after the cessation of the reason assigned for originally introducing them, *viz.*, the encouragement of the distillery business along the carrier's line, and had then withdrawn them, not upon the ground that they were inadequate, but because they gave rise to discrimination, and in so doing had introduced much higher rates, is sufficient to support an order of the state Railway Commission re-establishing such special rates as the maximum intrastate freight rates on such articles.

Constitutional law — Due process of law — Procedure before railway commission.

The procedure under Ky. Stat. § 829, for recovery before the state Railroad Commission of reparation for payments previously made to a carrier for transportation in excess of the rates found by such Commission to be reasonable cannot be said to deny the due process of law guaranteed by U. S. Const., 14th Amend., on the theory that there is no formal issue and no method of requiring the production of evidence, where there were pleadings sufficiently formal, and the carrier was permitted to raise such issues and introduce such evidence as it desired, and there is nothing to show that it suffered for lack of compulsory process against witnesses.

Statutes — Who may assail validity.

A carrier cannot object on constitutional grounds to the procedure under Ky. Stat. § 829, for the recovery of reparation for payments previously made to it for transportation in excess of the rates found by the state Railroad Commission to be reasonable, because on the subsequent trial in the courts to enforce the Commission's reparation order there is no right to adduce evidence other than such as was presented to the Commission unless the court shall first be satisfied that the evidence is such as could not have been produced before the Commission with the exercise of reasonable diligence, where there is nothing to show that such carrier has or could have any defense to the payment of reparation that it has not already either interposed or waived in the proceeding before the Commission, or to show that it has any evi-

dence to be adduced before the court that it would be prevented from introducing by the effect of this restriction.

[Argued December 11 and 14, 1914. Decided January 5, 1915.]

APPEAL from the District Court of the United States for the Eastern District of Kentucky to review an order refusing to enjoin the enforcement of rate-making and reparation orders of the state Railroad Commission. Affirmed.

See same case below, 214 Fed. 465.

The facts are stated in the opinion.

Messrs. Edward S. Jouett, William A. Colston, and Henry L. Stone for appellant.

Messrs. Edward W. Hines, J. V. Norman, Charles C. McChord, and Mr. James Garnett, Attorney General of Kentucky, for appellees.

Mr. Justice **Pitney** delivered the opinion of the court:

This case was here on a former occasion (*Louisville & N. R. Co. v. Garrett*, 231 U. S. 298, 58 L. ed. 229, 34 Sup. Ct. Rep. 48), when an order denying a motion for an interlocutory injunction was affirmed. The suit was brought by the railroad company to enjoin the enforcement of two orders made August 10, 1910, by the Railroad Commission of Kentucky, one of which prescribed maximum rates of freight upon certain intrastate traffic, and the other awarded specified amounts in reparation for payments previously exacted by the carrier for freight transportation in excess of the rates thus established by the Commission as reasonable. One of the grounds of attack upon the rate order was that the Commission had acted arbitrarily, in that there was no evidence before it tending to establish that the rates which the company had maintained were unreasonable. Upon the former appeal we held that since it appeared that there had been a hearing before the Commission, with evidence adduced on each side, and since this was not produced before the court, the general allegations of the bill respecting the effect of the evidence, and the statements contained in the affidavits submitted upon the application for injunction, were insufficient to justify the court in enjoining the rates upon the ground that the Commission either had denied the hearing which the statute contemplated, or by its arbitrary action had been guilty of an abuse of power. With

respect to the reparation order, we sustained the action of the court below in declining to determine its validity, upon the ground that the persons in whose favor the award was made had not been brought in as parties.

After our decision, appellant filed an amended and supplemental bill bringing in as defendants the parties in whose favor reparation was awarded, stating with more particularity the grounds upon which that order was attacked, and, with respect to the rate order, setting out as an exhibit a transcript of the evidence introduced before the Commission. Upon this amended and supplemental bill appellant again moved for an interlocutory injunction. The motion was heard before three judges, under § 266, Judicial Code (36 Stat. at L. 1162, chap. 231, Comp. Stat. 1913, § 1243), the application for injunction was denied (214 Fed. 465), and the case comes here by direct appeal taken pursuant to the provisions of the same section.

The jurisdiction of the Federal court was invoked because of questions raised under the Constitution of the United States, and not because of diversity of citizenship; but it extends, of course, to the determination of all questions presented, irrespective of the disposition that may be made of the Federal questions, or whether it is necessary to decide them at all. *Ohio Tax Cases*, 232 U. S. 576, 587, 58 L. ed. 738, 743, 34 Sup. Ct. Rep. 372, and cases cited.

The action of the Commission was based upon Kentucky Statutes: § 816, defining what shall be deemed extortion by a railroad corporation in charging toll or compensation for intrastate transportation; § 820a (the "McChord act"), authorizing the Commission, upon complaint made against a railroad company for charging extortionate freight or passenger rates, to hear the matter, and, if it determines that the company has been guilty of extortion, then to establish a just and reasonable rate for services thereafter to be rendered; and § 829, authorizing the commission to hear and determine complaints under § 816, and to render such award as may be proper.

It appears that for many years prior to March 25, 1910, the railroad company had voluntarily maintained special rates for the transportation of corn, rye, barley, and malt, and empty

barrels, boxes, etc., from three points of origin upon the Ohio river—Louisville, Covington, and Newport—to points of destination in the interior of the state; these rates being allowed only to owners of distilleries, when the commodities in question were used as raw materials or supplies. On the date mentioned, the carrier withdrew these special rates and substituted what are described as the “standard rates,” being the same that had been theretofore charged to others than distillers. Thereupon numerous distillery companies complained to the Commission, insisting that the new rates were exorbitant, and that the former rates were just and reasonable. After a hearing the Commission sustained the contention of the petitioners and established the maximum rates now in question, these being the same as the special rates, which, prior to March 25, 1910, the carrier had given to the distillery companies; but by the Commission’s order they were made to apply to the commodities mentioned, without regard to the use that was to be made of them.

The McChord act, under which the rate order was made, is set forth in *Siler v. Louisville & N. R. Co.* 213 U. S. 178, 53 L. ed. 754, 29 Sup. Ct. Rep. 451. It provides for notice to the carrier, stating the nature of the complaint or matter to be investigated, and the time and place of hearing it, and requires the Commission to hear such statements, argument, or evidence offered by the parties as the Commission may deem relevant. Section 829 likewise requires notice of the hearing to be given to the company; the evidence is to be reduced to writing, together with the award, and they are to be filed in the office of the clerk of a designated court, and a summons is to be issued requiring the company to appear and show cause why the award should not be satisfied. If the parties fail to appear, judgment is rendered by default; but if trial is demanded, the case is to be tried as ordinary cases are, except that no evidence shall be introduced by either party other than that heard by the Commission, or such as the court shall be satisfied could not have been produced before the Commission by the exercise of reasonable diligence. The judgment and proceedings thereon are to be the same as in ordinary cases. Since the case was here before, the court of appeals of Kentucky, in *Illinois C. R. Co. v. Paducah Brewery Co.* 157

Ky. 357, 163 S. W. 239, has passed upon § 829, upholding its validity under the state and Federal Constitutions, and construing it as authorizing the Commission to award reparation in money.

The contentions now made by appellants are reducible to two; first, that the rate order is invalid because not supported by substantial evidence; and, second, that the reparation order is invalid for the same reason, and also because the statute pursuant to which it was made violates the "due process" clause of the 14th Amendment.

To deal first with the rate order. In cases arising under the interstate commerce act, the provisions of which contemplate an investigation or inquiry conducted with some formality, followed by a written report and decision as the basis of the orders, it has been repeatedly held by this court that an administrative order made indisputably contrary to the evidence, or without any evidence, must be deemed to be arbitrary, and therefore subject to be set aside. *Interstate Commerce Commission v. Union P. R. Co.* 222 U. S. 541, 547, 56 L. ed. 308, 311, 32 Sup. Ct. Rep. 108; *Interstate Commerce Commission v. Louisville & N. R. Co.* 227 U. S. 88, 91, 92, 57 L. ed. 431, 433, 33 Sup. Ct. Rep. 185. It is contended that the "due process" provision of the 14th Amendment imposes a like rule of procedure upon the states with respect to their exercise of the legislative power of rate making.

We find it unnecessary to pass upon this question. The McChord act, like the interstate commerce act, contemplates that the Commission bases its determination upon the evidence adduced before it; and it may at least be assumed that the rate order must be held invalid unless it was founded upon substantial evidence. But we agree with the court below that there was substantial evidence to support the order. At the hearing, a Mr. Goodwyn was produced by the company, and made a statement of the facts in its behalf—not under oath, but it was received as evidence in behalf of the company—in substance that the special rates maintained prior to March 25, 1910, had been introduced more than thirty years before, in order to encourage the distillery business along the line of the railroad; that the rates were not

raised when the business of the distilleries became prosperous, but were continued as long as the railroad company could continue them with justice to itself; that is to say, to the point where prosecution was threatened by the Interstate Commerce Commission for alleged discrimination; and that in order to remove the discrimination the company had raised the rates charged on grain for distillery purposes in order to make them correspond with those charged on grain used for other purposes. These grain rates were the chief bone of contention. There was some other evidence, but not very much, that bore directly upon the question of the reasonableness of the rates; but it should be said that full opportunity was afforded to the railroad company to adduce such evidence as it desired. And since it appeared that the company, long prior to March 25, 1910, had voluntarily established the comparatively low rates upon a substantial part of their traffic, had maintained them for many years after the reason assigned for originally introducing them had ceased to exist, and had then withdrawn them, not upon the ground that they were inadequate, but because they gave rise to discrimination, and in so doing had introduced rates very much greater, it seems to us that the conduct of the carrier, in the absence of some explanation more conclusive than any that was made, was sufficient basis for a reasonable inference that the special rates in force prior to March 25, upon the distillery supplies were reasonable and adequate compensation for that and other similar traffic, and that the rates thereafter charged were unreasonably high to the extent of being extortionate. *Interstate Commerce Commission v. Louisville & N. R. Co.* 227 U. S. 88, 99, 57 L. ed. 431, 436, 33 Sup. Ct. Rep. 185. This was sufficient to give jurisdiction to the Commission under the McChord act, and to support the conclusion that it reached.

As to the reparation order, it is further insisted (a) that there was no evidence before the Commission to show that the several parties to whom reparation was awarded had paid freights based upon the rates complained of, or to show the amounts of their payments, or to show that the difference in the freight payments represented damages to which they were entitled; and (b) that so much of the statute (§ 829) as undertakes to provide the pro-

cedure for recovering reparation is contrary to the "due process" provision of the 14th Amendment, because in the proceeding before the Commission there is no formal issue and no method of requiring the production of evidence, while in the subsequent trial before the court, based upon the Commission's award, there is no right to adduce evidence other than such as was presented to the Commission, unless the court shall first be satisfied that the evidence is such as could not have been produced before the Commission with the exercise of reasonable diligence.

From the record, however, it appears that in the petition filed by the distillers and distillery companies before the Commission it was alleged that since March 25, 1910, each of the petitioners had been subjected to extortionate charges collected from them by the railroad company, and for which an award of reparation was prayed; the respective amounts thus claimed being particularly specified. The answers of the company admitted that the rates mentioned had been charged, collected, and received by it, but denied that they were extortionate, unjust, or unreasonable, and upon this ground, and no other, denied liability to make reparation. The transcript of the testimony taken before the Commission shows that the several reparation claims were presented, and the following colloquy occurred respecting them: "Mr. McChord (counsel for petitioners): 'Is there any question made as to the amount of those claims?' Mr. Goodwyn: 'We never checked them.' Mr. Dearing (counsel for the railroad company): 'My idea is that the Commission can easily check them, and you and I can check them if we come to the position that they are entitled to the reparation.' Mr. McChord: 'You deny it all?' Mr. Dearing: 'Yes.' Mr. McChord: 'I will put all these claims in as exhibits. Some of these have not been made up by the complainants, and we will want to fill them in later.' Mr. Dearing: 'That will be all right.' Mr. McChord: 'Shall I put them in now?' Mr. Siler: 'Yes, or at any time.'" In short, the record shows that the only question made respecting the reparation claims was the general contention that the rates charged by the company were in fact not unreasonable or extortionate; and that it was in effect conceded that the particular amounts claimed were proper to be awarded as reparation, if the

rates charged were determined to be unreasonable and extortionate.

We have already seen that there was evidence to support the Commission's affirmative finding upon the latter point. And this leaves no basis, as we think, for appellant's present attack upon § 829 as repugnant to the due process provision of the 14th Amendment. In the proceeding before the Commission there were pleadings sufficiently formal, and appellant was permitted to raise such issues and introduce such evidence as it desired. There is nothing to show that it suffered for lack of compulsory process against witnesses. As to its right to adduce evidence before the court in the action to enforce payment of the award, its complaint in this regard seems to us at least premature. There is nothing to show that it has nor could have any defense to the payment of the reparation that it has not already either interposed or waived in the proceeding before the Commission, or to show that it has any evidence to be adduced before the court that it would be prevented from introducing by the effect of the restriction contained in § 829. This court does not sit to pass upon moot questions; and, as has been often pointed out, it is incumbent upon one who seeks an adjudication that a state statute is repugnant to the Federal Constitution to show that he is within the class with respect to whom it is unconstitutional, and that the alleged unconstitutional feature injures him, and so operates as to deprive him of rights protected by the Constitution. *New York ex rel. Hatch v. Reardon*, 204 U. S. 152, 161, 51 L. ed. 415, 422, 27 Sup. Ct. Rep. 188, 9 Ann. Cas. 736; *Southern R. Co. v. King*, 217 U. S. 524, 534, 54 L. ed. 868, 871, 30 Sup. Ct. Rep. 594; *Standard Stock Food Co. v. Wright*, 225 U. S. 540, 550, 56 L. ed. 1197, 1201, 32 Sup. Ct. Rep. 784; *Plymouth Coal Co. v. Pennsylvania*, 232 U. S. 531, 544, 58 L. ed. 713, 719, 34 Sup. Ct. Rep. 359.

The order of the District Court should be, and it is, affirmed.

ILLINOIS PUBLIC UTILITIES COMMISSION.

IN RE APPLICATION OF THE TRI-COUNTY TELEPHONE
COMPANY.

[No. 2731.]

Rates — Discrimination — Stockholders.

A telephone company was authorized to change certain rates to eliminate discrimination in favor of stockholders, under a conference ruling providing that a stockholder cannot be given any greater or less or different rate than the rate charged other subscribers.

Rates — Discrimination — Subscribers owning telephones.

A telephone company was authorized to change certain rates to eliminate discrimination in favor of subscribers owning their telephones, under a conference ruling forbidding any reduction from the regular rate on account of subscribers owning their own telephones.

Rates — Telephones — Reasonableness — Individual business line.

Rates proposed by a telephone company, of \$15 per year for individual line business telephones in cities, and \$10.20 per year in villages, were held not excessive.

Rates — Reasonableness — Rural party lines — Increase.

An increase in the rate for party-line rural telephones to \$7.20 per year was held reasonable.

Rates — Rentals — Advance payment.

A rule of a telephone company which provided for payment of rentals two months in advance was held reasonable.

Rates — Discrimination — Valuation.

The value of a telephone company's property, its earnings and expenses, and the adequacy of its service, need not be considered in connection with an application to abolish discriminatory rates.

[January 21, 1915.]

APPLICATION to discontinue discriminatory rates: granted.

By the Commission: Application in the above-entitled matter sets forth that the petitioner is a public utility engaged in the management and operation of a telephone system consisting of local exchanges and connecting rural lines in Jefferson county, Illinois, with its principal place of business at Mt. Vernon, and that as such public utility it is subject to the provisions of an act entitled, "An Act to Provide for the Regulation of Public Utilities," now in force in the state of Illinois.

Application further sets forth that the rates of the petitioner now in force and effect are as follows:

Stockholders telephones	\$ 2.50 per year
(Stockholders in towns and rural districts are required to build and maintain one mile of line and furnish their telephones.)	
Nonstockholders who furnish their telephones	6.00 " "
Nonstockholders where the company furnishes the telephone	12.00 " "

Application is made for authority to change the rates charged subscribers who are stockholders, and subscribers who own their telephones, in order to discontinue discriminations, and to establish the following schedule of rates:

Classification.	Rates.
<i>Exchanges Classed as City Exchanges.</i>	
Individual-line business telephones	\$15.00 per year
Party-line business telephones	12.00 " "
Party-line residence telephones	7.20 " "
<i>Exchanges Classed as Village Exchanges.</i>	
Individual-line business telephones	10.20 " "
Party-line telephones, business or residence	7.20 " "
<i>Rural Telephones.</i>	
Party-line rural telephones	7.20 " " "

All rental charges are payable two months in advance.

To all subscribers owning their telephones, the company will pay an annual rental of \$1.20 per telephone.

Conference ruling No. 8, and other decisions heretofore made by this Commission, provide that a stockholder cannot be given any greater or less or different rate than the rate charged other subscribers. Conference ruling No. 15 provides that it is unlawful to grant any reduction from the regular rate on account of subscribers owning their telephones. The company may purchase or rent telephones now in use by the subscribers, but no subscriber shall be allowed a lower rate on account of his owning the telephone.

It appears that heretofore the utility has made no distinction between individual-line telephones and party-line telephones. The proposed schedule provides for individual-line and party-line business telephones and party-line residence telephones. The rates applied for in the application for individual-line business telephones, namely, \$15 per year in cities and \$10.20 per year in villages, do not appear excessive.

It further appears that the proposed increase in the rate for rural party-line telephones is reasonable. The difference of \$1.20 per year between the rate charged subscribers who own their telephones and the proposed rate is to be paid to the subscribers as a rental for the use of the telephones.

The rule which provides for the payment of rentals two months in advance, in this particular case, appears to be a reasonable regulation, and will be approved.

It is doubtful whether the utility will derive sufficient revenue from the proposed schedule to meet its obligations and the requirements of the law, but inasmuch as the proposed change in rates, as set forth in the application, is for the purpose of discontinuing discriminatory rates and charges, the value of the property, the earnings and expenses of the utility, and the adequacy of the service furnished, need not be considered in connection with this case.

It is therefore ordered that the present schedule of rates and charges of the petitioner, the Tri-County Telephone Company, shall be discontinued, and the following schedule established in lieu thereof:

Classification.	Rates.
<i>Exchanges Classed as City Exchanges.</i>	
Individual-line business telephones	\$15.00 per year
Party-line business telephones	12.00 " "
Party-line residence telephones	7.20 " "
<i>Exchanges Classed as Village Exchanges.</i>	
Individual-line business telephones	10.20 " "
Party-line telephones, business or residence	7.20 " "
<i>Rural Telephones.</i>	
Party-line rural telephones	7.20 " "

All rental charges are payable two months in advance.

To all subscribers owning their telephones, the company will pay an annual rental of \$1.20 per telephone.

It is further ordered that the rates herein authorized shall become effective as of January 1, 1915, and shall be filed, posted, and published as provided by § 34 of an act entitled, "An Act to Provide for the Regulation of Public Utilities."

By order of the Commission this 21st day of January, 1915, dated at Springfield, Illinois.

ILLINOIS PUBLIC UTILITIES COMMISSION.

IN RE APPLICATION OF THE AMERICAN TELEPHONE &
TELEGRAPH COMPANY.

[No. 3005.]

Rates — Telephone toll service — Discrimination — Additional minute rates.

A telephone company was ordered to discontinue certain irregular additional minute rates for toll service, and to substitute therefor the standard or regular additional minute rates, based on one third of the initial period rate in multiples of 5 cents, it appearing that only a few of the existing additional minute rates varied from the standard rate, that such variance caused confusion, that the increase in rates involved would apply to a very few points, that the increase in revenue would be negligible, and that the old rates were discriminatory under the public utilities act.

[January 21, 1915.]

APPLICATION to increase rates; granted.

Appearances: David F. Hall for applicant. No one appeared objecting.

By the **Commission**: Application in the above-entitled matter sets forth that the principal place of business of the American Telephone & Telegraph Company in Illinois, is at 212 West Washington street, Chicago, and that it is engaged in the management and operation of telephone toll lines within and from various points within and without the state of Illinois, and that as such public utility it is subject to the provisions of an act entitled, "An Act to Provide for the Regulation of Public Utilities," now in force in the state of Illinois.

Application further sets forth that the lawful rates of the applicant now in force and effect have been filed with the Commission in the form of a complete set of rate sheets, showing all rates between points in Illinois; that these rates, generally speaking, are 6 mills per mile, shortest railroad mileage, for an initial period of three minutes; that the additional minute rate where the initial period is less than \$1.75 is one third of the initial rate in multiples of 5 cents; and that where the initial rate is

\$1.75 or over the additional minute rate is, in most instances, a little less than one third of the initial period rate.

Application is made for authority to change certain rates, for the reason that the additional minute rate between points in Illinois should, in multiples of 5 cents, be one third of the initial period rate in all cases, this rate being generally used by other telephone companies operating toll lines in the state of Illinois, and for all interstate business originating and terminating in the state of Illinois on the lines of the American Telephone & Telegraph Company.

Hearings were held at Chicago, Illinois, December 9, 1914, and at Springfield, Illinois, December 14, 1914. David F. Hall, attorney, appeared for the applicant; no one appeared objecting.

It appeared from the testimony presented at the hearings, that only a few additional minute rates of the American Telephone & Telegraph Company in force and effect in the state of Illinois vary from the "standard rate," and that, by reason of this, confusion results on account of the large connecting companies of the American Telephone & Telegraph Company namely, the Central Union Telephone Company and the Chicago Telephone Company—using for the additional minute rate one third of the initial period rate.

It further appeared that the proposed changes will in no way affect any of the initial period rates between points in Illinois; that the additional minute rate will be increased only for points 288 miles and over apart, which applies to very few points in the state, and that the amount of revenue that will be derived by the American Telephone & Telegraph Company from the proposed change in the additional minute rate will be negligible.

This is substantiated by a statement filed by the petitioner, which shows the revenues between points in the state of Illinois where such irregular additional minute rates are now in effect, for the months of October, November, and December, 1913, on the basis of which the average monthly increase in revenue will amount to, approximately, \$8.70.

It appears that the additional minute rates now in effect where the initial rate is \$1.75 or over are discriminatory and in con-

flict with §§ 38 and 40 of the act entitled, "An Act to Provide for the Regulation of Public Utilities," approved June 30, 1913, and in effect January 1, 1914, which read:

"Sec. 38. . . . No public utility shall establish or maintain any unreasonable difference as to rates or other charges, services, facilities, or in any other respect, either as between localities or as between classes of service."

"Sec. 40. No telephone or telegraph company subject to the provisions of this act shall charge or receive any greater compensation in the aggregate for the transmission of any long-distance message or conversation for a shorter than for a longer distance over the same line or route, in the same direction, within this state, the shorter being included within the longer distance, or charge any greater compensation for a through service than the aggregate of the intermediate rates or tolls. But this shall not be construed as authorizing any such telephone or telegraph company to charge and receive as great a compensation for a shorter as for a longer distance."

It is therefore ordered that the petitioner, the American Telephone & Telegraph Company, shall discontinue the irregular additional minute rates now in force and effect in the state of Illinois, in connection with initial period rates of \$1.75 or over, and substitute in lieu thereof the standard or regular additional minute rate, based on one third of the initial rate in multiples of 5 cents.

It is further ordered that such change in rates shall become effective as of February 1, 1915, and shall be filed, posted, and published as provided by § 34 of an act entitled, "An Act to Provide for the Regulation of Public Utilities."

By order of the Commission this 21st day of January, 1915, dated at Springfield, Illinois.

MAINE PUBLIC UTILITIES COMMISSION.

IN RE PETITION BY THE BANGOR GASLIGHT COMPANY.

Rates, reduced — Discrimination — Charitable institutions.

A gas company was authorized to grant reduced rates to the Good

Samaritan Home at Bangor, on the ground that it is a benevolent and charitable organization under the public utility statute.

[January 4, 1915.]

Request for permission to furnish gas at reduced rates; granted.

By the **Commission**: The petitioner requests authority, under the provisions of § 32 of chapter 129 of the Public Laws of Maine for the Year 1913, to grant its service to the Good Samaritan Home, at Bangor, at reduced rates. Upon investigation the Commission finds that the Good Samaritan Home, at Bangor is a charitable and benevolent institution, and that its purposes and practices are benevolent and charitable. After such investigation, and after consideration, it is—

Ordered that the Commission approves the granting to said Good Samaritan Home, at Bangor, of the service of the petitioner at the reduced rates requested in said petition.

Benjamin F. Cleaves, William B. Skelton, Charles W. Mullen.
Public Utilities Commission of Maine.

MAINE PUBLIC UTILITIES COMMISSION.

IN RE APPLICATION OF THE MAINE CENTRAL RAILROAD.

Rates — Discrimination — Free and reduced rate transportation for charitable and benevolent purposes.

A railroad company was authorized to give free transportation and reduced rate transportation to the employees and inmates of certain benevolent and charitable organizations, under the Maine public utility statute, in view of the fact that the kind of transportation requested had theretofore been granted, and that plans had been made by parties affected, anticipating that there would be no change.

Rates — Discrimination — Free transportation to members of the Maine Agricultural Experiment Station denied.

Free transportation to members of the staff of the Maine Agricultural Experiment Station cannot be granted, on the ground that the institution is established under state and Federal laws, and is sup-

ported by state and Federal aid, since the Maine public utility law prohibits the granting thereof; the proviso in said law that it shall not be construed to prohibit free transportation as defined by the interstate commerce act not being applicable.

[January 6, 1915.]

APPLICATION to issue certain free and also reduced rate transportation to certain named persons and classes of persons and on account of certain named institutions; application granted in part and denied in part.

By the **Commission**: The petitioner requests approval by this Commission, under the provisions of § 32 of chapter 129, Public Laws of Maine for the Year 1913, to issue certain free transportation for persons exclusively engaged in charitable and eleemosynary work, and also for approval of this Commission of certain reduced rate transportation to certain persons and classes of persons and on account of certain institutions, such reduced rates to be for charitable and benevolent purposes.

The several persons, classes of persons, and institutions so to be transported and for which approval is asked are fully set forth in the petition therefor.¹

After consideration, and in view of the fact that the petitioner

¹ The petition referred to asked approval by the Commission of the issuance by the railroad company, as it might desire and deem consistent, of free or reduced rate transportation to persons, classes of persons, and on account of institutions as follows:

Free transportation in the form of trip passes to members of staff of the Maine Agricultural Experiment Station; to members of the operating staff employed at railroad branches of the Young Men's Christian Association on line of the company at certain points, and to dependent members of their families; to members of the staff of Maine Anti-Tuberculosis Association; to members of staff, chiefly to district nurses engaged in tuberculosis work, of the Washington County Anti-Tuberculosis Association; to members of the operating staff of the Maine Seacoast Missionary Society; to members of staff of Maine Children's Home Society with children in charge; to members of staff of the Children's Aid Society of Maine with children in charge; to Sisters of the Catholic Church; to members of staff, with children in charge, of Lewiston and Auburn Children's Home; to a specified individual with children in charge.

Free transportation, in the form of annual or term passes, to state and assistant state secretaries of Y. M. C. A.; members of staff of the Salvation Army.

has heretofore granted the kind of transportation requested in such petition to the same persons, classes of persons, and institutions, and that such persons, classes of persons, and institutions have made their plans, anticipating that no change would be made in respect to this, it is—

Ordered that the Commission approve the giving of the free transportation and of the reduced rate transportation specified in said petition and accompanying schedule, with the following exception, namely: The petition asks for free transportation to the members of the staff of the Maine Agricultural Experiment Station, and in the petition it is stated that the institution is established under state and Federal laws, and is supported by state and Federal aid. We regret that the law does not permit us to give our approval to this portion of this petition, but the interstate commerce commission act refers only to transportation of property of the state or municipal government, and does not provide for the transportation of persons. Section 32 of the utility act allows only such free transportation as is provided in the interstate commerce act. We therefore cannot approve of so much of the petitioner's request as relates to the Maine Agricultural Experiment Station.

Benjamin F. Cleaves, Wm. B. Skelton, Chas. W. Mullen, Public Utilities Commission of Maine.

Reduced rate transportation, in the form of special fare permits for the year 1915, authorizing ticket agents, on presentation of permit, to sell single trip tickets at the rate of $1\frac{1}{2}$ cents per mile to specifically named persons engaged exclusively in charitable and benevolent work on account of certain named institutions, or who are the subjects of charity and benevolence in such named institutions.

Reduced rate transportation, on application, by issue of single tickets at rate of $1\frac{1}{2}$ cents per mile for adults and $\frac{3}{4}$ cents per mile for children, to members of staff and persons subject of charity extended by certain charitable and benevolent organizations in Boston, Cambridge, Pittsfield, Worcester, and Jamaica Plain, Massachusetts, Portland, Maine, and New York city.

Reduced rate transportation, on application, by issue of single tickets at rate of 2 cents per mile to student preachers of the Bangor Theological Seminary.

As indicated in the opinion, the petition to issue the transportation asked for was approved with the exception of the transportation to the members of staff of the Maine Agricultural Experiment Station.

Note.—On January 11, 1915, the Maine Public Utilities Commission approved the giving of free transportation and of reduced rate transportation specified in a similar petition and schedule, In Re Application of the Bangor & Aroostook Railroad. In this case the petition was granted without exception, in view of the fact, as in the former case, that the petitioner had theretofore granted the kind of transportation requested to the same persons, classes of persons, and institutions, and that such persons, classes of persons, and institutions had made their plans, anticipating that no change would be made. The previous practice of the applicant, which was approved, had been to issue a special rate of $1\frac{1}{2}$ cents per mile for adults and $\frac{3}{4}$ cent per mile for children, for the officers of certain specifically named charitable institutions and the inmates of such institutions; also a single fare for round trips to officers and students of the Bangor Theological Seminary; also passes for charitable and benevolent purposes to officers and individuals of certain specifically named institutions.

MAINE PUBLIC UTILITIES COMMISSION.

IN RE BANGOR & AROOSTOOK RAILROAD.

Railroads — Rules to insure safety.

It was recommended that the rules of a railroad with reference to the distance a flagman should go to protect his train from collision should be modified from requiring "a sufficient distance to insure full protection," to requiring "at least seventeen telegraph poles away from the place to be protected."

[January 5, 1915.]

INVESTIGATION of an accident involving a passenger and a freight train; recommendations and findings of the Commission filed.

After reviewing the evidence in the case in detail, as to the cause of the accident, the Commission makes the following recommendation and finding:

RECOMMENDATION.

By the Commission: We therefore recommend, in spite of the fact that all the railroads of the country believe otherwise.

that rule 99 and 99A of the Bangor & Aroostook Railroad be so modified as to require all flagmen, when protecting either end of a train, to go at least seventeen telegraph poles away from the place to be protected.

FINDINGS.

We find that at 6.12 P. M. on November 28, 1914, near Crystal station, in the county of Aroostook, on the Bangor & Aroostook Railroad, train No. 7 and extra freight No. 60 were in collision, resulting in damage to the rolling stock of said railroad to the amount of about \$1,900, and serious injury to trainmen and passengers. That said collision was the combined result of the carelessness of the train dispatcher of said railroad in sending out a message, which might well have been understood to be an order or direction, and the extreme carelessness of the conductor and head brakeman of extra freight No. 60 in not sufficiently and seasonably protecting their train; and to the carelessness of Engineer Alderman of train No. 7 in not having his train under control, and in not carefully observing the ordinary rules of safety, so that by the doing of either of the above things, they could, in spite of the carelessness of others, have avoided the accident. We say this last for the reason that the evidence shows that Engineer Alderman was coming toward this station at approximately 45 miles an hour, and apparently had his head and shoulders inside the cab, and was not carefully observing conditions ahead which should have warned him of danger.

We also find that the engineer of extra freight No. 60 might himself have prevented the accident. The rules provide for joint responsibility between any conductor and his engineer. Seven or eight minutes before the collision came, the engineer of No. 60 could see the headlight of No. 7, which at that time would have been eight or nine minutes away. Under the circumstances it was entirely possible for the engineer of No. 60 to get into clear immediately, and under the rules it was his duty. Failure to do so was extreme carelessness on his part.

Benjamin F. Cleaves, Wm. B. Skelton, Chas. W. Mullen, Commissioners.

Note.—On January 9, 1915, the Maine Public Utilities Commission filed their findings and recommendations In Re the Maine Central Railroad Company. This was an investigation of an accident at Auburn, Maine, on the 4th day of January, 1915, in which one Alice H. Brown was instantly killed. After reviewing the evidence, the Commission says: "This accident probably occurred for the simple reason that the victim of it did not notice that the gates were down, and walked along blindly. She ought to have taken notice, but the fact remains that she did not. What she did is likely to occur again unless it is guarded against. This can be done by equipping the gates so that they will protect this sidewalk. Considering the location of the crossing and the extent of its use, we think that this should be done without delay. We therefore recommend that the Maine Central Railroad Company cause the gates at this crossing to be so changed or constructed that they will extend across the sidewalk when down. This may, and we expect will, be accomplished without the necessity of formal proceedings."

MAINE PUBLIC UTILITIES COMMISSION.

IN RE ACCOUNTS OF RAILROAD COMPANIES.

Accounting — Rules and decisions of Interstate Commerce Commission followed.

Railroad, street railroad, telephone, telegraph, and express companies ordered, from and after July 1, 1915, to keep and render their accounts in manner and form prescribed by the Interstate Commerce Commission for railroad companies, and to observe the rules and decisions of that Commission relating to classification and allocation of particular items, unless otherwise ordered.

Accounting — Fiscal year.

Railroad, street railroad, telephone, telegraph, and express companies are ordered to close their accounts annually, and take balance sheet on June 30th, beginning June 30, 1915, and to file same with the Commission on or before September 1st following.

[December 30, 1914.]

These general orders apply to railroad companies, street railroad companies, telephone companies, telegraph companies, express companies.

By the **Commission**: The Public Utilities Commission having under consideration the subject of uniform accounting for railroad companies as defined in § 9 of chapter 129, Public Laws

of 1913, and having given full weight to the special provisions of § 11 of said chapter, in which it is directed to "consider any system of accounting established by any Federal law, commission, or department, or any system authorized by a national association of such utilities," and recognizing that the adoption of any system for utilities now under the jurisdiction of the interstate commerce act, different from that already prescribed by the Interstate Commerce Commission, would require such utilities to keep two sets of accounts without any apparent benefit therefrom;

It is therefore ordered and decreed as follows:

1. All railroad companies, as defined in said § 9, until otherwise directed by this Commission, shall keep and render its accounts in the manner and form prescribed by the Interstate Commerce Commission for railroad companies.

2. The rulings and decisions from time to time promulgated by the Interstate Commerce Commission, relating to the classification and allocation of particular items, shall be observed as a guide for all such accounting under the jurisdiction of this Commission, except as otherwise determined by it.

3. All accounts shall be closed annually on the 30th day of June, and a balance sheet of that date promptly taken therefrom, one copy of which shall at once be forwarded to this department. On or before the 1st day of September next following, the utility shall prepare on blanks furnished it for that purpose, and file with this department, a report verified by an officer or owner of the utility, containing a copy of such balance sheet, together with such other information as the Commission may prescribe.

4. This order shall take effect as to the manner and form of such accounting, on the 1st day of July, 1915, and as to all other matters on the 30th day of June, 1915, until which time the utilities will be permitted to continue their present forms unless otherwise directed.

5. A copy of this order, certified by the clerk of this Commission, shall be forwarded by mail to each utility affected by it whose name appears in the files in this office; but its entry upon the records of the Commission shall be deemed notice hereof to all such utilities now, or hereafter while it remains in force, do-

ing business in this state or subject to the jurisdiction of this Commission.

Benjamin F. Cleaves, Wm. B. Skelton, Chas. W. Mullen, Commissioners.

NEBRASKA STATE RAILWAY COMMISSION.

IN RE APPLICATION OF THE NEBRASKA TELEPHONE COMPANY.

[Application No. 2303.]

Records — Authority to destroy.

A telephone company was authorized to destroy certain of its records and memoranda where it appeared that the application was reasonable, warranted by existing conditions, and that the records and memoranda were not of permanent value.

[January 19, 1915.]

APPLICATION for authority to destroy certain records; granted.

ORDER.

Clarke, Chairman: Whereas, the Nebraska Telephone Company has made application to the Nebraska State Railway Commission for authority to destroy certain of its records and memoranda, the form number, description, and period when said records were made, being as follows:

Form No.	Description.	Period.	Transcribed to Other Records.
G-71	Contract Work Order. Covers installation, removal, and change in telephone service.	1-1910 to 3-1911 inclusive.	Yes.
182-Z	Subscribers' Contracts for telephone service. Service discontinued as per column to right.	1-1909 to 12-1911 inclusive.	From Work Orders.
None	Service Ledgers. Memo record of monthly charges and credits to exchanges which have become a part of our revenue.	1-1909 to 12-1911 inclusive.	In summaries.

Form No.	Description.	Period.	Transcribed to Other Records.
3527	Daily list of completed contract work orders.	5-1912 to 12-1913 inclusive.	No. Record made from Work Orders.
3528	Instrument Report. Record of instruments charged to an exchange.	7-1910 to 12-1913 inclusive.	Yes.
None	Report of Examinations & Audits by Traveling Auditors.	5-1905 to 12-1911 inclusive.	To memo cards as to date and conditions.
5010	Traveling Auditors' Reports of employees' advance account audits.	1-1910 to 12-1911 inclusive.	To memo cards as to date and conditions.
4527	Cafe Order—Detail of meal ordered.	12-19-11 to 9-30-14 inclusive.	No.
4535	Lunch Room Coupons used in payments of Cafe orders.	12-19-11 to 9-30-14 inclusive.	No.

And it appearing to the Commission, upon due investigation and consideration, that the application is reasonable, warranted by existing conditions, and that the records which it is proposed to destroy are not of permanent value;

It is ordered by the Nebraska State Railway Commission that the desired authority be, and the same is, hereby granted.

Nebraska State Railway Commission. Henry T. Clarke, Jr.,
Chairman.

NEBRASKA STATE RAILWAY COMMISSION.

IN RE APPLICATION OF THE UNION PACIFIC RAILROAD COMPANY.

[Application No. 2295.]

Railroads — Switching charges.

A railroad company was authorized to publish a rule with reference to switching charges for handling cars, loaded and empty, where it appeared that the application was reasonable and warranted by existing conditions, the same to become effective as provided in the order.

[January 15, 1915.]

PETITION for authority to publish rule in connection with switching rates; granted.

ORDER.

Clarke, Chairman: Whereas the Union Pacific Railroad Company has made application to the Nebraska State Railway Commission for authority to publish the following rule in reference to switching charges, *viz.*:

“Switching charges named herein (unless otherwise specified) will cover the handling of cars loaded one way and empty the other, between the points provided for. If cars are loaded in both directions, regular charge will be made for each loaded movement, and if empty both ways, they will be charged for same as if loaded one way. Will not apply on passenger equipment.”

And it appearing to the Commission, upon due investigation and consideration, that the application is reasonable and warranted by existing conditions;

It is ordered by the Nebraska State Railway Commission that the desired authority be and the same is hereby granted, the rule as above authorized to become effective from and after publication and filing with the Commission of a lawful tariff providing therefor, but not later than thirty days from date of order.

Nebraska State Railway Commission, Henry T. Clarke, Jr., Chairman.

WISCONSIN RAILROAD COMMISSION.

BARKER & STEWART LUMBER COMPANY ET AL.

v.

CHICAGO, MILWAUKEE, & ST. PAUL RAILWAY
COMPANY.

Rates — Discrimination — Differing schedules for same commodity.

The maintenance of differing schedules of rates by carriers of the same commodity under similar conditions, while affording prima facie ground for question, may not involve unjust discrimination.

[January 28, 1915.]

COMPLAINT against transportation rates on saw logs and bolts; dismissed.

Appearances: A. E. Solie for the petitioners; and J. N. Davis for the respondent company.

RATES AND REPARATION.

By the Commission: The complaint by the above petitioners is in substance that the respondent company has exacted of each of them rates of transportation on certain shipments of saw logs and bolts in carloads, which are unjust and exorbitant, and by reason thereof they have been overcharged on said shipments, for which reparation is asked.

More specifically the complaint alleges that the rates of the respondent company as carried in its tariff known as G.F.D. No. 6500-B and supplements thereto are excessive, discriminatory, and illegal "in so far as they exceed the rates found to be reasonable for the transportation of saw commodities between points in Wisconsin on the line of the Chicago & Northwestern Railway in the case Northern Hemlock & Hardwood Mfrs. Asso. v. Chicago & N. W. R. Co., which was decided by this Commission July 11, 1913."

After due notice a hearing was held in the case in the office of the Railroad Commission at Madison on September 8, 1914, at which A. E. Solie appeared for the petitioners and J. N. Davis for the respondent company.

In 1913, as indicated by the petitioners upon complaint of the Northern Hemlock & Hardwood Manufacturers' Association that the Chicago & Northwestern Railway Company was about to withdraw its trainload rates on logs, and leave in force only its carload rates, which were much higher, this Commission made an investigation of the subject of the complaint. It found that the trainload rates which the Northwestern was about to withdraw were unreasonably low, and that their withdrawal was justified. It found, also, that the Northwestern carload rates, which would be the only available rate for shippers of logs after the withdrawal of the trainload rates, were about 75 per cent higher than the latter. Such an advance in rates at one stroke seemed to the Commission to be extreme, and it issued an order establishing a schedule of rates which were considerably higher than the former trainload rates, but lower than the then existing carload

rates. It is this schedule prepared by the Commission which the petitioners in the present case use as a standard to measure the rates which they complain of as being maintained by the respondent, the Chicago, Milwaukee, & St. Paul Railway Company.

Though it is alleged in the petitioners' complaint that the respondent's rates are excessive, unreasonable, and unlawful, no effort was made, at the hearing or otherwise, to prove that the rates were excessive or unreasonably high in themselves. The fact that they have been maintained at a somewhat higher level than the schedule prepared by the Commission for the Northwestern line seems to be the sole rock of offense.

Prima facie, the maintenance of differing schedules of rates by carriers of the same commodity under similar conditions does give ground for question at least. And yet, the maintenance of two differing schedules may not involve unjust discrimination. Rates for the transportation of logs are low, exceedingly low, in Wisconsin. That they should be low, that logs should be transported at rates which bring to the carriers lower returns than brought by most other commodities, cannot be gainsaid, but it is open to question whether these rates have not reached as low a level as justice will permit,—if indeed they have not in some instances gone below that.

When this Commission passed upon the case of the Northern Hemlock & Hardwood Association v. the Chicago & Northwestern Railway Company in 1913, the task before it was to save the shippers of logs from a sudden advance of 75 per cent in rates, such as the withdrawal of trainload rates would have brought about, rather than to lower the average level of the log schedule.

The Commission does not feel warranted in finding that the petitioners are suffering from unjust discrimination through the maintenance by the respondent company of its present rates on logs. But this is not the Commission's only reason for not granting at this time the petitioners' prayer for relief.

It is the Commission's belief that, before any further extensive changes are made in the rates upon the commodity in question, there should be made a thorough investigation of the entire field of log transportation in Wisconsin, to the end that log rates may

be made equitable as between the shippers, as well as reasonable in and of themselves.

It is therefore ordered that the complaint and prayer for separation be dismissed.

Railroad Commission of Wisconsin, By Halford Erickson, John H. Roemer, Commissioners.

WISCONSIN RAILROAD COMMISSION.

TOWN OF REMINGTON

v.

CHICAGO, MILWAUKEE, & ST. PAUL RAILWAY COMPANY.

Highways — Crossing railroad — Necessity — Jurisdiction.

The Commission has no jurisdiction to determine the public necessity for a railroad highway crossing authorized by a regularly organized town, this being a question to be determined by the municipality in interest.

Highways — Grade crossing.

A new highway laid out by a town to cross a railroad was ordered to cross at grade, separation being impracticable, the cost thereof to be borne equally by the town and railroad company.

[January 27, 1915.]

APPLICATION to require railroad company to construct highway crossing; granted.

Appearances: Theodore W. Brazeau for petitioner; J. N. Davis for respondent.

By the Commission: The petitioner, a regularly organized town in Wood county, alleges in substance that it has duly laid out a new highway which crosses the tracks of the Chicago, Milwaukee, & St. Paul Railway Company, in the unincorporated village of Babcock, on the north and south quarter-section line in section 14, township 21 north, range 3 east, and that respondent has refused to construct a proper crossing at this point. The Commission is therefore asked to require respondent to construct a crossing in the mode and manner to be prescribed by the Commission under the authority conferred upon it in §§ 1797-12e and 1797-12 of the statutes.

The respondent in its answer alleges in substance that there is no public necessity for a crossing at the point in question, and that such a crossing would be unsafe for the public, and would cause great and unwarranted expense to the railway company. It therefore asks that the complaint be dismissed.

A hearing was held at Babcock on September 10, 1914, at which Theodore W. Brazeau appeared for the petitioner and J. N. Davis for the respondent.

At the hearing much testimony was introduced with reference to the public necessity of a highway crossing at the proposed site. Counsel for the respondent contends on brief that the Commission has authority under §§ 1797-12e of the statutes, to refuse to permit the establishment of a crossing on the ground that public necessity does not require it. Counsel for petitioner maintains in his brief that the question of the public necessity of a proposed crossing is to be determined by the municipality in interest, and that the Commission is without jurisdiction in the matter. The Commission has taken the latter position in similar cases (*Elcho v. C. & N. W. R. Co. — Wis. R. C. R. —*; and *Superior v. G. N. R. Co. — Wis. R. C. R. —*), and we see no reason for withdrawing from the position there taken. To hold otherwise would in effect place the Commission in the position of dictating a municipality's highway development.

The testimony shows that the physical conditions at the crossing as laid out, and the traffic which would probably use it, are not such as to make grade separation practicable. We find and determine, therefore, that the crossing as laid out by the town of Remington should be constructed at grade, and we regard as equitable an apportionment of the cost of such new crossing under which the Chicago, Milwaukee, & St. Paul Railway Company shall pay 50 per cent thereof, and the town of Remington 50 per cent thereof. It does not appear advisable to attempt to definitely pass upon the need of some form of protection at the new crossing, until it shall have been completed and the actual conditions of travel determined.

It is therefore ordered that the proposed crossing of the new highway laid out by the town of Remington and the line of the Chicago, Milwaukee, & St. Paul Railway Company located on the

north and south quarter section line in section 14, township 21 north, range 3 east, in said town of Remington, be at grade; and the respondent, the Chicago, Milwaukee, & St. Paul Railway Company, is hereby directed to construct a suitable grade crossing at said point.

It is further ordered that the said respondent furnish all necessary material and labor and perform all necessary work in fulfilling the provisions of this order, and that upon the completion of the work said respondent furnish the Commission with a complete and detailed account of all expenses incurred by it therein, whereupon the Commission, with or without further hearing, as may be deemed best, will determine the actual expense of constructing the crossing, and the town of Remington shall thereupon pay to the respondent 50 per cent of the cost as so determined by the Commission, and 50 per cent thereof shall be borne by the respondent.

June 1, 1915, is considered a reasonable date at which the crossing herein ordered shall be completed and opened for public travel.

Dated at Madison, Wisconsin, this — day of January, 1915.

Railroad Commission of Wisconsin.

WISCONSIN RAILROAD COMMISSION.

MASON-DONALDSON LUMBER COMPANY

v.

CHICAGO & NORTHWESTERN RAILWAY COMPANY.

Rates — Water competition — Intermediate points.

The Commission will not reduce, as unreasonable or excessive, intermediate point rates which are higher than through rates based upon water competition, where such intermediate rates do not yield more than their fair share of the cost of transportation or service involved, and where no unjust discrimination is found.

Rates — Water competition — Intermediate points.

The Commission will not reduce rates between intermediate points which are higher than through rates based upon water competition, when such intermediate rates are not in themselves excessive or unreasonable.

Rates — Group systems.

The Commission will be careful not to reduce as excessive or unreasonable rates that are parts of group systems of rates, where such rates do not operate to do injustice to any point or to any shipper.

Traffic — Water competition — Rates to secure — Cost basis.

Carriers should not neglect traffic for the reason that regular rates cannot be secured owing to water competition, if rates can be secured that will yield something above the additional cost of handling, and will not result in unjust discrimination.

Railroad tariff — Explanatory clause — Construction.

The Commission refused to construe an explanatory clause of a railroad tariff in favor of a complainant shipper, where a different construction placed upon it by the railroad company had been acquiesced in by shippers for a number of years, merely on the ground that the clause was ambiguous.

[January 7, 1915.]

PETITION for reduction in rates and reparation; dismissed.

Appearances: R. B. Coapstick for petitioner; C. C. Wright and H. C. Cheyney for respondent.

RATES AND REPARATION.

By the Commission: This case involves a request for a reduction in rates between certain points, for reparation upon shipments already made, and, incidentally, for the construing of a clause found in the published tariff of the respondent company. The petitioner alleges specifically in its complaint that the rates charged on lumber from Odanah and from Rhinelander to Milwaukee, Racine, and Kenosha are excessive and unreasonable; that under an explanation clause in the respondent's published tariff the rates charged the petitioner are not only excessive, but illegal.

After due notice a hearing was held in the office of the Railroad Commission in the capitol, at Madison, on November 10, 1914. Mr. R. B. Coapstick appeared for the petitioner and C. C. Wright and H. C. Cheyney for the respondent.

It appears from the testimony given at the hearing and from the tariffs submitted and made part of the record, that a rate of 10 cents per cwt. is charged by the respondent and other carriers from Ashland and other upper lake ports to Milwaukee, Racine, Kenosha, and other points in the southern portion of the state. The specific rates complained of, and which the petitioner has paid on shipments, are 12 cents from Odanah and 11 cents from Rhinelander to the southern destinations named. Odanah and

Rhinelanders are directly intermediate between Ashland and the destinations named, the latter being more than 100 miles nearer the points shipped to than Ashland.

The clause referred to as being part of the tariff issued by the respondent company, and which has been in force for several years, reads: "The rates authorized herein on intrastate traffic between stations in Minnesota or stations in Wisconsin will be the maximum rates to be applied to or from intermediate stations in Minnesota or Wisconsin."

The reparation asked for is the sum of \$137.19, being the excess over a 10 cent rate charged the petitioner on certain shipments made.

The contention of the respondent company is that the 10 cent rate from Ashland and other lake ports named was made to meet water competition; that the rates of 12 cents from Odanah and 11 cents from Rhinelanders are not excessive or unreasonable; that both the lake port rates and the rates from the intermediate points named are parts of group systems which cannot be disturbed without disadvantage to shippers as well as to carriers, and that the clause quoted as fixing a 10 cent rate for intermediate points refers only to intermediate points not specified, that being the natural and legal construction of the clause.

The group systems which include Ashland and other lake ports, and Odanah and Rhinelanders, have been, on the whole, beneficial to both shippers and carriers. This Commission has made it a rule to scrutinize group rates closely because they are somewhat outside normal conditions, but it has also been careful not to disturb group rates where they did not operate to do injustice to any point or any shipper. In the case before us the petitioner cannot claim to have been unjustly dealt with because longer hauls were made from other points at lower rates. The question here is whether the rates charged the petitioner from Odanah and from Rhinelanders are in themselves excessive or unreasonable. In view of the fact that the explanatory note or clause in the respondent's published tariff has been construed not to refer to specified points like Odanah and Rhinelanders, and that this construction has been acquiesced in by shippers for a number of years, the fact of it being somewhat ambiguous should not be held to have established a different interpretation.

The rates from Ashland to the destinations mentioned are based entirely on water competition, and in the past have had to be granted by the carriers in order to obtain a share of this traffic. Competitive traffic of this kind cannot always be had at the regular rates. Such traffic, however, should not be neglected for this reason. For it is as a rule best for all concerned that it should be accepted by the carriers, provided it can be had at rates that yield something above the additional cost of handling such traffic; and provided, further, that it does not result in unjust discriminations.

The Commission has carefully investigated the cost to the carrier of the services involved in the complaint, as well as the cost of the services involved in transporting the logs into the mills from which the lumber in question is manufactured, which rates on the logs under the system of concentration rates on raw material which is in effect in this state become a part of the issues, and has found in this investigation that the existing rates under present conditions do not yield more than their fair share of the cost of the transportation or service involved, and that no unjust discriminations have been discovered which would require any reductions in these rates. Nor has it been found that any different construction of the clause referred to than that which has been accepted in actual practice for years is justified by the conditions.

It is therefore ordered that the petition in this case should be dismissed, and that it hereby is so dismissed.

Dated at Madison, Wisconsin, this 7th day of January, 1915.

Railroad Commission of Wisconsin.

WISCONSIN RAILROAD COMMISSION.

FOND DU LAC BUSINESS MEN'S ASSOCIATION

v.

CHICAGO & NORTHWESTERN RAILWAY COMPANY.

[No. ———.]

Jurisdiction — Service — Interstate sleeping car.

The Wisconsin Railroad Commission has no jurisdiction to require a railroad company to change the intrastate point of departure of a

sleeping car operated primarily in interstate passenger service, unless it appears that such regulation is necessary for adequate intrastate service.

[January —, 1915.]

PETITION to require respondent to change point of departure of interstate sleeping car; dismissed.

Appearances: Lester C. Busch for petitioner; W. G. Wheeler for respondent; R. A. Hollister for city of Oshkosh; E. H. Smith for Oshkosh Chamber of Commerce.

By the **Commission**: The petition alleges in substance that a sleeping car is now set out at Oshkosh by the Chicago & Northwestern Railway Company's train No. 224 at 10.27 p. m. daily, and is picked up by train No. 102 at 2.42 a. m. passing through Fond du Lac at 3.15 a. m. *en route* for Chicago; that this arrangement makes it necessary for patrons who live at Fond du Lac to await its arrival at an unusual hour, or travel to Oshkosh at an increased expense to board it, and that to require train No. 224 to carry this sleeping car through to Fond du Lac, arriving there at 11.20 p. m., would be more satisfactory to patrons at Fond du Lac, and would not seriously discommode patrons at Oshkosh. The Commission is therefore asked to require respondent to set out this sleeping car at Fond du Lac instead of Oshkosh.

The respondent in its answer alleges that the parlor car in question is set out at Oshkosh in order to accommodate not only the people of Oshkosh, but the traveling public of the adjoining territory, totaling from 50,000 to 60,000 people, who would be seriously discommoded by the change prayed for, and that patrons at Fond du Lac can travel to Oshkosh by steam or inter-urban electric roads at a convenient hour to obtain accommodations in the sleeping car.

Hearings were held at Fond du Lac on October 7, 1914, at Oshkosh on October 20, 1914, and at Appleton on October 21, 1914. Lester C. Busch appeared for the petitioner and W. G. Wheeler for the respondent. At the Oshkosh hearing R. A. Hollister appeared for the city of Oshkosh and E. H. Smith for the Chamber of Commerce of that city.

The testimony shows that the sleeping car under consideration is operated primarily for the accommodation of persons in Ap-

pleton, Neenah, Oshkosh, and Fond du Lac, and the territory tributary thereto, who desire to make the trip to Chicago during the night. It is set out at Oshkosh at 10.27 P. M. and picked up at 2.42 A. M., passing Fond du Lac at 3.15 A. M., Milwaukee at 5.10 A. M., and arriving in Chicago at 7.45 A. M. It is apparent from the testimony that relatively few persons use this sleeper to travel to Milwaukee or other Wisconsin points, and that the chief complaint is that residents of Fond du Lac who desire to make early train connections at Chicago are inconvenienced by reason of the fact that they are obliged to sit up until 3.15 A. M., or travel to Oshkosh to obtain accommodations on this sleeping car.

To grant the relief sought would therefore necessitate the regulation of interstate passenger service, which is beyond the jurisdiction of the Commission, except where such regulation is necessary for adequate intrastate service. In the present case no such condition exists. The travel to Milwaukee on this sleeping car appears to be negligible. Moreover, other train service is provided with which it is possible to reach Milwaukee from Appleton and intermediate points in the early forenoon or late in the evening; and from the testimony it seems unlikely that the operation of an intrastate sleeping car between Appleton and Milwaukee at approximately the same hour as the Chicago car would be justified by the traffic. The petition must therefore be dismissed for lack of jurisdiction.

It is therefore ordered that the petition herein be, and the same is hereby, dismissed.

Railroad Commission of Wisconsin.

MARYLAND PUBLIC SERVICE COMMISSION.

IN RE APPLICATION NORTHERN CENTRAL RAILWAY
COMPANY, PHILADELPHIA, BALTIMORE, & WASH-
INGTON RAILROAD COMPANY, PENNSYLVANIA
RAILROAD COMPANY, ET AL.

[No. 145.]

Industrial switching — Defined.

The term "industrial switching" as used by the Maryland Commis-

sion in order No. 75, May 31, 1912, embraces all carload movements within a switching district laid off by the legislature or by a duly empowered commission, whether such carload movements involve the changing of the point of delivery for a car coming into the district from the outside, or a strictly local intracity movement.

[January 5, 1915.]

APPLICATION to amend tariffs with respect to industrial switching; denied.

Henry, Commissioner: The question before the Commission in these proceedings is the interpretation and construction of its order No. 775, defining, among other things, "industrial switching," which order is dated May 31, 1912, and which became effective, after its affirmance by the court of appeals of Maryland, on January 15, 1914. The question is apparently a narrow one, but it leads back to a broad field and to an investigation of trials and hearings not only before this body, but also before circuit court No. 2 of Baltimore city and before the court of appeals of Maryland.

We are called upon to decide not what "industrial switching" is, or ought to be, in the light of the practices and usages of the railroad world, but rather to make a declaratory exposition of what was the meaning of that term as used by the Commission in the order above referred to.

The pending case was instituted by the Northern Central Railway Company, the Philadelphia, Baltimore, & Washington Railroad Company, the Pennsylvania Railroad Company, and the Union Railroad Company, in an application to amend their tariffs heretofore filed, alleging that as respects industrial switching such tariffs were filed under a misapprehension and under a misinterpretation of the Commission's order.

The proposition may best be understood by quoting the first two paragraphs of the application itself, which are as follows:

"1. That the Commission, by its order No. 775, in the Matter of the Complaint of Baltimore Drug Exchange et al. v. The Baltimore Belt Railroad Company et al., Case No. 95, to which case your applicants herein were parties, said order having been passed on the 31st day of May, 1912, defined industrial switching as follows:

“‘Industrial switching is hereby defined to be, and shall be, the movement of a loaded car from any spur, track, junction, yard, or terminal of a carrier to any spur, track, junction, yard, or terminal of the same carrier,’ which definition coincided and agreed with what your petitioners herein, and railroad people generally, understood industrial switching to be; and your petitioners under industrial switching, before the passage of the order of the Commission, transported loaded cars arriving loaded at any private siding or terminal of your petitioners in the city of Baltimore to any other private siding or terminal within the 48 hours’ free time allowed for unloading after arrival at a charge or rate very much lower than that which was charged when your petitioners were required to place an empty car on a private siding or terminal for loading with 48 hours’ free time allowed for the same, and then transport the said car to another siding or terminal within the city of Baltimore, allowing 48 hours for unloading; for this last-mentioned service, which was never known as industrial switching, the regular class rates were always charged, whereas for industrial switching as herein above defined by the Commission, and as known by your petitioners, a flat per car rate was charged; and industrial switching, as so known and practised by your petitioners applied to only cars arriving at a private siding or a terminal of your petitioners within the city of Baltimore, loaded, from a point without the city of Baltimore; and the placing of an empty car for loading the 48 hours’ free time for loading, and the transportation thereof within the city of Baltimore, with 48 hours’ free time allowed for unloading at another terminal or siding within the city of Baltimore, was never known or practised by your petitioners as industrial switching.

“2. That your petitioners, in printing and filing their tariffs, for the purpose of making the same conform, as to industrial switching, with the order of the Commission of May 31, 1912, hereinabove referred to, erroneously made said tariffs read so that the \$5 per car flat rate prescribed by the Commission as applicable to industrial switching as defined by the Commission and as theretofore known and practised by your petitioners, was made to apply to the placing of an empty car for loading on a

siding or terminal within the switching district established by the Commission, the transportation of said car, after 48 hours allowed free for loading, and 48 hours' free time allowed for unloading at another siding or terminal within the switching district; instead of confining the \$5 per car flat rate to industrial switching proper as defined by the Commission, and as known and practised by your petitioners prior thereto, that is to say, the movement of a loaded car arriving within the switching district loaded from a point without to some other terminal or siding within the district within the 48 hours' free time allowed for unloading after the arrival of the car within the district."

To the solution of this proposition, it is necessary, in the first place, to go back to the case in which the order was passed, it being Case No. 95, entitled, "Baltimore Drug Exchange et al. v. Baltimore Belt Railroad et al." The petition of the complainants in this case, which is the foundation upon which all the proceedings are based, is expressed in general terms in its reference to switching charges, and there is nothing in it to disclose that the petitioners had in mind the regulation of local freight rates for intracity traffic, in addition to the switching charges for freight coming into the city from outside points, except in so far as local freight rates may be included under the general denomination of switching. We have before us the stenographic record of the testimony produced before the Commission, as well as the record of the fuller testimony taken in the circuit court of Baltimore city, to which tribunal the case was taken on appeal from this body. In the statements of counsel and in the testimony itself, we find references made to "industrial switching" as involving local freight movements where the point of origin and the point of destination, are both within the switching limits of the city, and in view of the subsequent presentation of this question in a different case before the Commission, reference to which will be hereinafter made, we must assume that the Commission, no less than circuit court No. 2 aforesaid, must have had in mind the local freight traffic as a part of industrial switching, though the inclusion of such traffic in switching movements was probably for the most part ignored by counsel and witnesses be-

cause of the larger and more important questions involved in the controversy.

For instance, in the statement of G. S. Patterson, one of the attorneys of the Northern Central Railroad, in the circuit court of Baltimore, found on pages 401 and 402 of the record of the court of appeals in the case of the Northern Central Railway Company et al. v. Philip D. Laird et al., the following language was used:

"It has been suggested, I think, by Mr. Daish here, that a lower charge should be established by the railroad for performing what is practically a drayage service in the city of Baltimore, that is, a carload of freight originates on a private siding of the tracks of the Baltimore & Ohio Railroad in the city of Baltimore, and they desire in some isolated cases—the instances must be very few—where cars shall be moved to a private siding of the tracks of the Pennsylvania Railroad. . . . In the first place, it means the placing of an empty car on this siding on the Baltimore & Ohio Railroad; that is then entitled to forty-eight hours tying up; then demurrage begins to accrue, and it is entitled to that same period, of almost three days for unloading, and the result of development of traffic of that kind, to take the place of drayage through the streets, must in the long run result in the congestion of the carrier's terminal facilities, and to the great detriment of the business interests of the merchants of the locality."

Again, in Case No. 95 aforesaid, the brief filed by Messrs. Patterson, Parker, & Gaither, of counsel for defendants, devotes two pages to the discussion of local rates within the city of Baltimore. (See B. & O. brief, page 24; subheading 7.)

Scattered through the testimony, also, are questions and answers which indicate that attorneys and witnesses and the court had brought to their attention the subject of intracity local freight movements, and that apparently their understanding of the question was to the effect that the Commission made no distinction between local transportation movements within the switching district and the switching of cars coming into said district from points outside of it.

On page 261 of the court of appeals record aforesaid, Harry

R. Lewis, general freight agent of the Baltimore & Ohio lines east of the Ohio river, was asked this question by Mr. Parker, counsel for the Baltimore & Ohio: "In your opinion, have the rates fixed for this intracity transportation any bearing on the amount of the traffic?" This question and several preceding ones show that local freight rates were under consideration in the proceedings, as well as make evident the contemporaneous construction of counsel and parties of the term "industrial switching" as used in the Commission's order. There are other occasional references to the same point in the testimony.

But if we should disregard these references as being a slight and trivial recognition of the point under discussion, and should assume because of its relative unimportance that the question was ignored by the Commission in passing its order, we would be confronted by the action of the Commission in the case of the *Burns & Russell Company v. Northern Central Railway Company* (Case No. 765), in which the precise point was directly presented to the Public Service Commission, and, we think, impliedly passed upon and decided by this body. We can reach no other conclusion, unless we should assume that the Commission overlooked both the pleadings in the case and the testimony of the witnesses.

In the case last mentioned, the complainant is a corporation and is engaged in the manufacture and sale of bricks, its chief plant in the state being located at Dundalk, on the line of the Sparrows Point branch of the Northern Central Railway Company, within the boundaries of the switching district, and its principal shipments are to customers within the same district. It so alleges in its petition, and complains that the defendant railway company "has hitherto failed and refused to include and put into effect rates for industrial switching from one point of the Sparrows Point branch of the Northern Central Railway Company to other points within the especially designated territory of the Northern Central Railway Company," etc.

The respondent makes answer to the petition by saying that the Sparrows Point branch is not a part of its system, and also that the traffic to which the complainant alludes in its petition is not industrial switching as meant in the Commission's order.

We take the following extract from the amended answer of the respondent:

"7. And in further answer to the whole complaint, your respondents say that industrial switching, as understood among railroad men prior to the order of the Commission, and as defined in said order, never has included, and was never meant to include, the placing of empty cars for loading, the giving of 48 hours' free time for loading, the transportation of the loaded car, and the giving of another 48 hours for unloading as this complainant seems to insist upon, but on the contrary industrial switching has been always understood to mean, and there is nothing to the contrary in the Commission's order, defining its meaning, the movement of a loaded car from one terminal or industrial siding of the same carrier, the said car having been loaded and consigned to the first terminal or siding from distant points within or without the state, and the only free time allowed in the transaction was the original 48 hours' free time for unloading; and therefore the complainant is demanding more than is required by the order of the Commission, even as respects the separate carriers concerned in the order."

In the stenographic record filed in these proceedings, we find that the testimony of Gamble Latrobe, an official of the Northern Central Railroad (folios 40-49), H. A. Haines, also a railroad official (folios 52-55), was full and specific upon the subject of industrial switching, as embracing local traffic, and the statements of counsel and queries of counsel in the same record are in pointed and direct reference to the same question. These railroad officials and attorneys, let it be said, disagreed with the interpretation of the complainant, and were seeking to combat the meaning accepted in the first instance by them.

In this case, therefore, we have many and varied facts showing the Commission had in mind the interpretation of its order of May 31, 1912, defining "industrial switching." We have, in the first place, a petitioner engaged in the very kind of traffic that is the subject of dispute; secondly, the complaint itself sets forth in full and direct language the grievance complained of as being the refusal of the respondent to give switching rates for its intracity shipments; thirdly, the answer of the respondent join-

ing issue squarely on the question; fourthly, extended testimony of a number of witnesses on the same subject. It must be remembered, as respects the answer of the respondent, that both of the allegations in said answer, to wit, (1) that the Sparrows Point branch was not a part of the Northern Central Railway system; (2) that the traffic set forth in the petition did not constitute industrial switching as defined in the aforesaid order of the Commission,—went to the whole matter of the bill, and the finding of either of them to be true and correct would have been a complete bar to the remedy sought by the complainant.

Yet, in the face of this, we find the Commission, speaking through Commissioner Towers, discussing the subject of industrial switching without in any manner indicating that it shared the view of the respondent on that subject, and accompanying that opinion by an appropriate order, giving the complainant the relief sought by it. Taking this in conjunction with the nature of the grievance complained of, and the testimony and arguments shown in the proceedings, and applying it to the facts of the situation, based as it was upon a petition and answer that squarely raised the question, we find it illogical for us to reach any other conclusion than that the Commission had in mind the subject of industrial switching, and meant to give that term such interpretation as was contended for by the complainant.

Let us look again to the contemporaneous construction of the order. The original complaint in Case No. 95 was filed before this body on January 19, 1911, and the order was passed on May 31, 1912. After running its course through the lower and upper courts, the order became effective on January 15, 1914, at least that part of the order which appertains to industrial switching. Immediately after the announcement of the decision by the court of appeals, we find all the railroads, who were defendants in the case, through their experts and accredited officials, filing with this Commission a schedule of rates which conformed to the interpretation heretofore given to our order by most of the shippers of Baltimore and as understood by the protestants in the pending case.

While all the defendants applied the Commission's order to local freight traffic and filed tariffs accordingly, that of the B. &

O. R. R. Co. seems to recognize the point in clearer language than the others. After announcing the rates of No. 1 and No. 5, the schedule states:

"These rates apply to traffic which has reached Baltimore, Md., via the B. & O. R. R. and is reconsigned to points within the defined territory for B. & O. R. R. delivery, and will also apply in traffic from a point on the B. & O. R. R. within such limits for delivery at a point on the B. & O. R. R. within the same limits."

We feel we should not evade a consideration of the language used in the order of the Commission. It is as follows:

"*Industrial switching* is hereby defined to be, and shall be, the movement of a loaded car from any spur, track, junction, yard, or terminal of a carrier to any spur, track, junction, yard, or terminal of the same carrier."

Much emphasis in the argument of the applicant was placed on the use of the word "loaded" in this definition as indicating that no consideration could have been had of a transportation movement which, in the first instance, involves the placing of an empty car on a siding to be loaded. According to a well-known maxim of interpretation, we must consider the definition in its association with the other rules for switching service published at the same time. In most of these rules and definitions it will be observed that the word "loaded" is used, but we think a fair interpretation of all of them would lead to the implication that, in some cases, the term presupposed the placing of an empty car on a siding for the purpose of being loaded, and then either to be switched for a line haul outbound or to a point of destination and delivery within the switching area. The significance of the word would be greater if we could look at the subject from the standpoint of the applicant that "industrial switching is not the beginning nor the middle of transportation, but the end of it;" but the applicants' own witnesses, to say nothing of those of the protestant, defined the term as being either antecedent to a line haul or subsequent to it. Looking at the subject, therefore, in this double aspect, as applying to outbound and inbound freights alike, it necessarily follows that the rule would apply to cars loaded within the switching district as well as those loaded out-

side thereof and brought into it, and so understanding it we think it explains the definitions of the Commission. These definitions are as follows:

"Yard switching is hereby defined to be, and shall be, the movement of a loaded car from any spur, siding, or track in a yard of any carrier to another spur, siding, or track in the same yard.

"Connecting line switching is hereby defined to be, and shall be, the movement of a loaded car from any spur, track, junction, yard, or terminal of one carrier to any spur, track, junction, yard, or terminal of another carrier, provided that said movement shall not require the use of the instrumentalities and facilities of more than two carriers.

"Line movement connecting line switching is hereby defined to be, and shall be, when a car has received or will receive further transportation beyond the Baltimore switching district as hereinbefore described and defined.

"Local movement connecting line switching is hereby defined to be, and shall be, the movement of a car locally between points within the Baltimore switching district as hereinbefore described and defined.

"Intermediate switching is hereby defined to be, and shall be, the movement of a loaded car from any spur, track, junction, yard, or terminal of one carrier, thence to and over the lines of another carrier, and thence to a spur, track, junction, yard, or terminal of a third carrier.

"Line movement intermediate switching is hereby defined to be, and shall be, when a car has received or will receive further transportation beyond the Baltimore switching district hereinbefore described and defined.

"Local movement intermediate switching is hereby defined to be, and shall be, the movement of a car locally between points within the Baltimore switching district hereinbefore described and defined.

"Industrial switching is hereby defined to be, and shall be, the movement of a loaded car from any spur, track, junction, yard, or terminal of a carrier to any spur, track, junction, yard, or terminal of the same carrier."

From these definitions it appears that in "connecting line" switching and in "intermediate switching," both a "line" and a "local" movement are referred to; and if switching movements are applicable to outbound as well as to inbound freights, then in providing the line and local movements the Commission must have contemplated a freight originating in the district and loaded there for local delivery within the same district as well as for a line movement. It will be observed that for "yard" and "industrial" switching no local or line movement is referred to. In respect thereto, all movements are usually local, because as a car could be started in a line haul from one siding as well as from another there is no occasion for a switching movement for line-haul purposes.

As illustrative of the contention that the use of the word "loaded" car in the sundry definitions contained in the order of the Commission does not necessarily eliminate the antecedent moving of an "empty car" to a siding for the purpose of being loaded, we may here cite the definition of "industrial switching" as announced by the Illinois Railroad and Warehouse Commission, when the term is used expressly to include transportation between points in the switching limits:

" 'Industrial switching' is hereby defined to be the movement of a loaded car from any elevator, warehouse, industry, or place of business located upon or adjoining any side track, or from any team track used by the public when loading or unloading cars, to another elevator, warehouse, industry, or place of business located upon or adjoining any side track, or to any team track used by the public in loading and unloading cars, where point of origin and destination are both within the switching limits of any town, city, or village, as herein defined, and are both on the line of a single railroad."

Entertaining this view of the case, we deem it unnecessary to discuss at length the subject from an academic standpoint, or to analyze the conflicting opinions of experts as to the practices and usages in the railroad world. One fact seems clear that the term is one of flexible meaning, being different in different localities. Much might be said in support of the point that switching movements, while embraced in the generic term of trans-

portation, are yet distinct movements, carried on within restricted and defined limits, either precedent to a line haul out from such limits or subsequent to a line haul coming into such limits from the outside, the rate for switching being low in comparison with ordinary transportation rates because the charges are usually paid to the switching road by the road having the line haul. In other words, the switching charges are made comparatively low because there is a reciprocal arrangement between roads, some one of which has had, or is to have, the benefit of a line haul, and in a given period of time the freights will be equalized among the various carriers. When merely supplementary to the line haul and incidental thereto, the Supreme Court of the United States in the case of the Interstate Commerce Commission v. Atchison, Topeka, & Santa Fe Railroad Company, decided in June, 1914, under the facts and circumstances of that case, held that a carrier should not be permitted to make any charge for such "switching" movements, holding these to be merely a completion of the line haul which were paid for under the original contract of transportation. This is limiting the term "industrial switching" to its narrowest limits, and is to be considered only in connection with the facts of the case.

On the other hand, it may be argued with equal force—if not with so much regard to the ordinary signification of the words, at least with as great a support in the definitions of the Public Service Commissions—that when a certain area in and near a trade center, where railroads converge and have their terminals, is laid off by the legislature, or by some Commission clothed with requisite authority, as a "switching district," that all carload movements within that district, whether they be the changing of the point of delivery for a car coming into the district from the outside or a strict local intracity movement, are properly classified as "switching" movements, and the charges for such movements are arbitrarily fixed at a flat rate per car, without reference to the character of the freight, the weight of the load, and the distance of the haul.

It is in the latter and larger sense that we think this Commission considered "switching," and laid down boundaries for

such movements, and fixed charges therefor. We are inclined to this view by an analysis of the Commission's opinion and order in Case No. 95; we are strengthened in that view by the pleadings, the testimony, the arguments of counsel, the relief sought and granted in Case No. 765; we are impelled to it by the contemporaneous construction placed upon the order by the parties most interested in resisting it, whose interpretation could not be ascribed to inadvertence when it was written with deliberation in the tariffs filed before this body; and we are led to it finally by the knowledge that in many of the cities there is a "switching district" wherein carload freights are distributed at arbitrary rates per car, not based upon the length of the haul, and that such arrangements as respects outside freight have not only tended to the convenience of carriers in keeping their tracks, sheds, and terminals free of congestion, and to the advantage of shippers and consignees, but have also promoted and fostered local commerce among industries located within the favored area.

The Commission's order may be defective in that it was not more explicit on this subject, but we think the interpretation above given is the proper one, and therefore shall uphold the construction which for many months received, without question, the acquiescence, if not the approval, of the public, including the railroads themselves.

An order will be passed in conformity with these views, refusing permission to the petitioners to modify the tariffs heretofore filed by them.

MICHIGAN RAILROAD COMMISSION.

IN RE APPLICATION OF MINNEAPOLIS, ST. PAUL,
& SAULT STE. MARIE RAILWAY COMPANY.

[No. D—764.]

Security issue — Bonds — Acquisition of property outside state.

A railroad company was authorized to issue its corporate bonds for the reimbursement of its treasury for certain construction expenditures, and for the acquisition of a certain completed railway line outside of

the state, and for the refunding of certain equipment trust notes, provided said bonds be sold for money only, at not less than 75 per cent of the par value thereof, and that the proceeds of such sale be used first for said construction and acquisition costs, and the surplus applied to the refunding of said notes.

[January 27, 1915.]

APPLICATION for authority to issue bonds; granted.

By the **Commission**: Application was filed in the above entitled matter on the 25th day of January, A. D., 1915, from which said application and accompanying documents it appears that it is the purpose of said corporation to issue \$2,637,000 of corporate bonds for the purpose of reimbursing its treasury for the construction or acquisition of 131.85 miles of additional railway and for refunding certain equipment trust notes which may lawfully be refunded, and this Commission, being duly advised in the premises, are of the opinion that said corporate bonds are reasonably required for the purposes of said corporation.

Therefore, by virtue of the authority vested in us by law, it is hereby ordered:

1. That said corporation issue bonds as follows: Two million, six hundred thirty-seven thousand dollars (\$2,637,000) par value of bonds of said corporation, known as "Minneapolis, St. Paul, & Sault Ste. Marie Railway Company First Consolidated five (5) per cent Fifty-Year Gold Bonds" of the denomination of one thousand dollars (\$1,000) each, bearing interest at the rate of five per cent (5%) per annum, such interest to be payable semiannually on the first days of January and July of each year; said bonds to bear date of July 1, 1888, and to mature July 1, 1938, being issued in accordance with the terms of a certain mortgage known as "First Consolidated five per cent (5%) Mortgage."

2. Said bonds shall be issued and sold for money only, and at not less than seventy-five per cent (75%) of the par value thereof, and the proceeds derived therefrom shall be used first to pay for the construction or acquisition of one hundred thirty-one and eighty-five hundredths (131.85) miles of railway, located outside of the state of Michigan, and which consists of extensions

of branches already operated as part of said corporation's railway, or of new branches thereof which it has the lawful right to own and operate as part of its railway, all of which railway has now been built and fully completed. Whatever surplus is left above the costs of said railway shall be used for refunding the equipment trust notes of said corporation known as series A, B, C, D, E, and F.

3. That on or before six months from date, said corporation shall, by a statement duly verified, report to this Commission the sale of any and all bonds under and by virtue of the terms of this order, and the purpose or purposes to which the money received therefrom has been applied, and shall make a like report upon the expiration of each and every six months' period until the whole of said bonds have been sold and the proceeds expended.

4. That before any bonds shall be sold under and by virtue of the provisions of this order, a certified copy hereof shall be entered upon the records of said corporation.

Done at Lansing, Michigan, this 27th day of January, A. D. 1915.

Michigan Railroad Commission. Lawton T. Hemans, Chairman, C. L. Glasgow, Commissioner, C. S. Cunningham, Commissioner.

WISCONSIN RAILROAD COMMISSION.

TWENTY-SECOND WARD ADVANCEMENT ASSOCIATION

v.

MILWAUKEE ELECTRIC RAILWAY & LIGHT COMPANY.

Street railroads — Service during rush hours.

A street railroad company was ordered to operate through cars between certain designated points in the city of Milwaukee during the morning and evening rush hours, in accordance with the standard of rush-hour service fixed in the general service order of the Commission, although capital expenditure was necessary for the installation of track connections to make such service possible, where the Commission believed that the traffic would fully justify the service when patrons became accustomed to the new arrangement.

Street railroads — Service — Capital expenditure justified.

A relatively small capital expenditure should not stand in the way of necessary street railroad through car service.

Street railroads — Service — Capital expenditure not justified.

A street railroad will be permitted to terminate its through service at a specified point, where it appears that beyond such point its traffic is not such as to warrant a considerable expenditure to make such operation possible.

[January 19, 1915.]

REHEARING upon order to operate through cars between specified points in the city of Milwaukee; order modified.

Appearances: D. W. Hoan for petitioner; Miller, Mack, & Fairchild, by J. B. Blake, for respondent.

REHEARING.

By the Commission: Under date of July 22, 1914, an order was issued in the above-entitled matter, requiring the Milwaukee Electric Railway & Light Company to operate through cars from the north terminus of its Twenty-seventh street line to the downtown district via State street, and from the west terminus of its North avenue line to the downtown district via Eighth street, during the morning and evening rush hours, in accordance with the standard of rush-hour service fixed in the general service order, 13 Wis. R. C. R. 3, and fixing the date for compliance as September 1, 1914.

Under date of August 18, 1914, the respondent applied for a rehearing, alleging that the order requires the operation of cars in part over a track which is not now in place, and that compliance with the order will prevent the proper allotment of car carrying capacity to the flow of passengers as intended by the general service order above referred to.

A rehearing was duly ordered and held at Milwaukee on September 2, 1914. D. W. Hoan appeared for the petitioner; and Miller, Mack, & Fairchild, by J. B. Blake, for the respondent.

At this hearing it was shown that at the intersection of North avenue and Eighth street additional track work is necessary for the operation of through cars via North avenue as provided in the order. Respondent's assistant general manager testified that the required work would cost from \$5,172 to \$5,572 according

to the character of the construction, and that to purchase and install such special work would require from sixty to ninety days.

He also stated that the through service on the Twenty-seventh street line via State street, which was in operation prior to the previous hearing, terminated at Center street, and that to extend such service to the terminus of the Twenty-seventh street line at Burleigh street, as specified in the order, is impracticable with the existing track layout on account of the use of trailers. He expressed the opinion that through service north of Center street is not justified by the traffic conditions.

Statistics relating to the existing transfer traffic at Eighth street and North avenue and other intersections of the North avenue line and downtown lines were introduced. There were also offered data as to the financial ability of the respondent to comply with the order, and in this connection reference was made to exhibits offered in the matter of the application of the respondent for an interpretation and modification of the general service order, 13 W. R. C. R. 3, now pending. These data have been given consideration. The capital expenditure necessary for the installation of track connections at the intersection of North avenue and Eighth street will not be so great as estimated by the assistant general manager, inasmuch as the evidence shows that respondent contemplates using material removed from another intersection. This expenditure, which is relatively small, should not stand in the way of necessary service.

In the light of the testimony and evidence, and upon investigation, we are of the opinion that through service between the district under consideration and the downtown district during the rush hours, other than that now provided on the Twenty-seventh street line, is necessary for adequate service. Owing to the fact that it is impracticable to operate trailers north of Center street on Twenty-seventh street with the existing track layout, and that the traffic north of Center street is not such as to warrant a considerable expenditure to make such operation possible, it appears reasonable, for the present at least, to so modify the order as to permit the downtown service on Twenty-seventh street via State street to terminate at Center street. In our judgment

the operation of through cars during the rush hours, between Forty-seventh street and North avenue and the downtown district via North avenue and Eighth street offers the best solution of the problem, and we still believe that when patrons become accustomed to the new arrangement, the traffic will fully justify the service.

It is therefore ordered that our former order herein be and the same is hereby modified to read as follows:

That the respondent, the Milwaukee Electric Railway & Light Company, operate through cars between the intersection of Center street and Twenty-seventh street and the downtown district via Twenty-seventh and State street, and between the intersection of Forty-seventh street and North avenue and the downtown district via North avenue and Eighth street, during the morning and evening rush hours, in accordance with the standard of rush-hour service fixed in our general service order of November 25, 1913, 13 Wis. R. C. R. 3, and make such track and overhead connections as are necessary for operating the service herein ordered.

April 1, 1915, is considered a reasonable date at which the track and overhead connections shall be completed and the service herein ordered shall be in operation.

Dated at Madison, Wisconsin, this 19th day of January, A. D. 1915.

Railroad Commission of Wisconsin. David Harlowe, John H. Roemer, Halford Erickson, Commissioners.

WISCONSIN RAILROAD COMMISSION.

IN RE BLOOMER ELECTRIC LIGHT & POWER COMPANY.

Electric service — Reinstatement.

An electric light and power company must, in Wisconsin, for the purpose of supplying service to a customer in a reasonably safe and reliable manner, install, at its own expense, a new transformer and lightning arresters, where a transformer previously installed by it just outside the customer's premises, and not protected by lightning arresters, was burned out, presumably as the result of an electric storm.

Electric service — Safety devices.

It is the duty of a public utility supplying electricity for light and power to provide such devices as transformers and lightning arresters as are necessary for the reasonable protection of the consumer and his property from electric storms and from current carried by high voltage transmission lines.

Electric service — Apparatus not on premises of consumer.

The Wisconsin statute which exempts utilities from the requirement of installing on consumer's premises any part of the facilities incident to service, except meters and appliances for measurement, does not apply to transformers not located on consumer's premises, and to lightning arresters, usually installed on the same pole as the transformer.

[January 23, 1915.]

COMPLAINT to compel reinstatement of light and power service; reinstatement ordered.

Appearances: L. P. Martiny in his own behalf; Martin Rasmus for the company.

By the **Commission**: Upon complaint of L. P. Martiny that the Bloomer Electric Light & Power Company unreasonably refuses to reinstate light and power service at his place, and upon investigation, a hearing in the matter was duly ordered on motion of the Commission and held at Bloomer on November 12, 1914. L. P. Martiny appeared in his own behalf, and Martin Rasmus for the Bloomer Electric Light & Power Company.

The testimony shows that L. P. Martiny lives on a farm about $4\frac{1}{2}$ miles north of Chippewa Falls, and that his farm buildings are about $\frac{3}{4}$ mile distant from the transmission line of the Bloomer Electric Light & Power Company, which carries a high voltage. Light and power service was formerly furnished Mr. Martiny by means of a transformer installed by the company near the road just outside of Mr. Martiny's yard, and by wiring constructed at the customer's expense. No lightning arresters were installed, the president of the company having assured Mr. Martiny that such installations were unnecessary. In June, 1914, the transformer was burned out, presumably as a result of an electric storm, and Mr. Martiny has since been without service, the company insisting that he bear the cost of the new transformer and of lightning arresters. The question for decision,

therefore, is whether this cost should be borne by the company or the consumer.

It is the duty of a public utility supplying electricity for light and power to provide such devices as are necessary for the reasonable protection of its customers and the public. In *Columbus R. Co. v. Kitchens*, — Ga. —, L.R.A.1915, —, 83 S. E. 529, the supreme court of Georgia holds in substance that where an electric light company maintains overhead wires from its plant to a residence of one of its patrons for the purpose of supplying light to the house, the company is under duty to employ such approved apparatus in general use as will be reasonably necessary to prevent injury to the house or persons or property therein arising from electricity, which may be engendered by a thunder storm, and strike the wires and be conducted thereby into the residence. The same court in an earlier decision, *Heidt v. Southern Teleph. & Teleg. Co.* 122 Ga. 474, 50 S. E. 361, used the following language: "Persons or companies operating telephone and electric light systems for the transmission of electricity upon and over public highways owe to the public the duty of properly constructing and maintaining their respective wires and poles; they are bound to provide such safeguards against danger as are best known and most extensively used, and all necessary protection must be afforded to avoid casualties which may be reasonably expected."

In Wisconsin this duty does not extend to apparatus which is situated on the premises of the consumer, since § 1797m-90 of the Statutes exempts utilities from the requirement of installing on consumers' premises any part of the facilities incident to service except meters and appliances for purposes of measurement.

The language of the statute is as follows:

"It shall be unlawful for any public utility to demand, charge, collect, or receive from any person, firm, or corporation less compensation for any service rendered or to be rendered by said public utility in consideration of the furnishing by said person, firm, or corporation of any part of the facilities incident thereto; provided nothing herein shall be construed as prohibiting any public utility from renting any facilities incident to the production, transmission, delivery, or furnishing of heat, light,

water, or power, or the conveyance of telephone messages, and paying a reasonable rental therefor, or as requiring any public utility to furnish any part of such appliances which are situated in and upon the premises of any consumer or user, except telephone station equipment upon the subscribers' premises, and unless otherwise ordered by the Commission meters and appliances for measurements of any product or service."

In the present case the transformer is not located on the premises of the consumer, and it is the usual practice to install a lightning arrester on the same pole as the transformer. Such installations are necessary for the reasonable protection of the consumer and his property from electric storms, and from the current carried by the high voltage transmission line. Had the lightning arresters been installed when the line was originally constructed, it is probable that the transformer would not have been burned out. Under such circumstances, it is unreasonable to require the consumer to bear the expense of installing a new transformer and the necessary lightning arresters. Such devices should be furnished by the utility and maintained by it.

It is therefore ordered that the Bloomer Electric Light & Power Company reinstate electric service for lighting and power purposes to L. P. Martiny, and furnish and maintain at its own expense such transformers, lightning arresters, and other equipment as are necessary to supply such service in a reasonably safe and reliable manner.

Dated at Madison, Wisconsin, this 23d day of January, 1915.

Railroad Commission of Wisconsin, by David Harlowe, John H. Roemer, Halford Erickson, Commissioners.

WISCONSIN RAILROAD COMMISSION.

EBENEZER TELEPHONE COMPANY

v.

MILWAUKEE LIGHT, HEAT, & TRACTION COMPANY.

Jurisdiction — Relocation of high tension transmission lines.

The Commission has no jurisdiction to order the removal of a high tension transmission line from the vicinity of a telephone line of earlier construction.

Service — Duty to furnish adequate telephone service.

It is the duty of a telephone company to render adequate service, at its own expense if necessary, although a high tension line, subsequently constructed, interferes with the adequacy of its service and the operation of its telephone line.

Damages — Telephone service — High tension lines — Remedy.

A telephone company whose service and business have been interfered with by the subsequent construction of a high tension transmission line must seek its remedy in the courts.

[January 26, 1915.]

PETITION for removal of high tension transmission line; dismissed.

Appearances: Edward Wieman for petitioner; C. M. Rosecrantz for respondent.

By the **Commission**: The petitioner is a corporation owning and operating a rural telephone system in the town of Watertown, Jefferson county, Wisconsin. The respondent is a public utility engaged in the transmission of high tension electric current for light and power.

The petitioner alleges that on August 5, 1913, it was informed that the respondent contemplated the construction of a high tension electric line in the territory in which petitioner's lines are constructed, and the petitioner thereupon notified the respondent not to construct its lines on the same side of the highway on which the petitioner's lines are located, as the construction of the high tension lines in such proximity to petitioner's lines would injure petitioner's service and occasion a loss of business, and also increase the hazard to its employees, and endanger the lives and property of its patrons; that notwithstanding such notice the respondent build a line on the same side of the highway on which petitioner's lines are located, carrying a current of 23,000 volts or more, which voltage has greatly interfered with the petitioner's service; that although the petitioner has urged the respondent to remove its lines to the other side of the highway, the latter has neglected and refused so to do. Wherefore petitioner asks that an order be made by the Commission, requiring the petitioner to remove the poles and lines as aforesaid.

The respondent, answering the petition, admits that peti-

tioner's lines were constructed prior to the construction of respondent's line, but denies that the petitioner notified it not to build its lines on the same side of the highway on which petitioner's lines were constructed, or that the construction or operation of its transmission lines would endanger the petitioner or its subscribers. It further alleges that the said lawful authority to construct its transmission lines in the manner in which they are constructed and which are maintained in conformity with the best electric practice, and that although it believes that the petitioner is not entitled to compensation by the respondent, it has offered to pay the petitioner a sum amply sufficient to enable petitioner to transfer its lines and poles and reconstruct same, so that respondent's transmission lines would in no way affect the operation of the petitioner's telephone lines. Wherefore, respondent asks that the petition be dismissed and such further relief as the Commission shall deem just.

The matter came on for hearing on August 17, 1914. The petitioner was represented by Edward Wieman, and the respondent by C. M. Rosecrantz.

Upon the hearing it appeared that in the summer of 1910 the petitioner began the construction of its lines along the highway in question. In 1913 the respondent constructed a high tension transmission line from the city of Watertown through the town of Watertown and the village of Johnson Creek, extending to Lake Mills, Jefferson and Ft. Atkinson, which transmission line paralleled petitioner's line on the highway passing through the town of Watertown. Before the respondent erected its poles on the same side of the highway on which petitioner's poles are located, petitioner requested it not to do so, but to place them upon the opposite side of the highway, believing that the transmission lines overheading the telephone lines would interfere with the telephone service. Priority of right to the side of the highway in question was claimed by petitioner. Notwithstanding such request, the respondent constructed its lines as planned, and petitioner claims as a result that its telephone lines have been short-circuited and become grounded; that in damp weather the induction is so great at times that the telephones are put out of commission; that there is also danger from

static current should the transmission wires break and fall upon the telephone lines. This interference, together with the fear of accident likely to happen, has caused some of petitioner's subscribers to discontinue their subscription.

Considerable testimony was introduced, showing the efficiency of the construction of both the telephone and transmission lines. It is unnecessary to review this testimony. Doubtless, if petitioner's lines were transferred into complete metallic circuit, the interference with its service would be greatly lessened, if not entirely eliminated. It would be much better if the high tension line or the telephone lines were changed to opposite sides of the highway. This would eliminate all grounds of complaint.

The confronting difficulty in the case is the want of jurisdiction in the Commission to compel either company to change the location of its lines. If the telephone company has suffered damage because of the interference with its service and business, it may possibly recover the same in an action in court. It is the duty of the telephone company under the circumstances to render its service adequate at its own expense if the respondent is unwilling to bear the same. If it has any remedy against the respondent it must seek the same in court. The situation here presented suggests the necessity of additional legislation, giving the Commission power to determine the location of high voltage transmission lines. Numerous cases are arising due to the interference of high voltage transmission lines with telephone lines. If, before the construction of a high tension line, it was incumbent upon the corporation constructing such line to apply to the Commission for authority as to route and location, the difficulty presented in the instant case and other cases pending before the Commission would be obviated in the future. For the reasons stated the petition must be dismissed.

Now therefore it is ordered that the petition be and the same is hereby dismissed.

Dated at Madison, Wisconsin, this 26th day of January, A. D. 1915.

Railroad Commission of Wisconsin, by John H. Roemer,
David Harlowe, Commissioners.

WISCONSIN RAILROAD COMMISSION.

IN RE JANESVILLE WATER COMPANY.

Valuation — Municipal purchase — Indeterminate permit.

In connection with the purchase of property of a public-service corporation by a municipality under an indeterminate permit, it is necessary that the Commission give consideration to all lines of evidence tending to show the fair value of the property.

Valuation — Going value — Municipal purchase.

The value to be fixed by the Commission upon the purchase of the property of a waterworks company by a municipality under an indeterminate permit must be the value of the going concern, and not the value of the physical plant as an entirety distinct from the business in which the company is engaged.

Valuation — Fair value — Elements to be considered.

In estimating the fair value of a waterworks property for municipal purchase, the actual investment, the cost of reproduction new, and the cost of reproduction less depreciation, are the most important factors.

Valuation — Replacements.

The practice of crediting discarded property to property and plant at its salvage value only, instead of at its cost new, is improper, since the effect is to keep the difference between the original cost and the amount received for salvage permanently charged to property and plant.

Valuation — Reproduction — Construction materials.

The cost of materials on hand for construction purposes should not be added to the estimated value of a plant of a public-service corporation, where the accounting practice of the company has been to charge construction materials to construction as purchased rather than as used, since this would result in a duplication of the charging of such material to property and plant.

Valuation — Depreciation — Water pumps.

In estimating the cost of reproduction for the purpose of obtaining the fair value of a waterworks property for municipal purchase, depreciation of pumps to 50 per cent of condition new on a basis of a 40 year life, which included some allowance for obsolescence, was held not to be too great where the pumps had been used for some time.

Valuation — Depreciation — Fan to engine.

In estimating the cost of reproduction for the purpose of obtaining the fair value of a waterworks property for municipal purchase, allowance of a condition of 50 per cent new of a Sturdevant fan and engine which was secondhand at the time of installation, and which had been in use for eleven years, was held to be ample.

Valuation — Reproduction — Identical equipment.

The cost of reproducing equipment may be based upon the cost of reproducing the identical equipment rather than the equivalent equipment, where there is nothing to indicate that the original investment in the equipment was unwisely made, or that a reasonable degree of

regard for the ultimate economy of construction would have required the installation of a different equipment, although what it would cost to replace it by equivalent units of equal capacity but of different design may also be considered.

Valuation — Reproduction — Mains extended at consumers' expense.

In estimating the cost of reproduction of pipes and mains of a waterworks company for municipal purchase, some consideration should be given to the fact that a number of extensions were made at the expense of consumers, and that there is no record of the transfer to the company of many of such extensions, where the total cost of such untransferred extensions would be several hundred dollars, although the statement of the cost of all of such extensions would be impracticable.

Valuation — Accrued depreciation — Small mains.

In estimating the accrued depreciation of mains of sizes smaller than 4 inches, for the purpose of determining the fair value of a waterworks property for municipal purchase, the depreciation was placed at 50 per cent of condition new, based on an estimated average life of between thirty and forty years.

Valuation — Accrued depreciation — 4-inch pipe.

The depreciated condition of 4-inch cast-iron water mains was placed at 90 per cent of value new in a valuation of the waterworks property for municipal purchase, it appearing that the life of such mains is between fifty and one hundred years, and that the depreciated condition on an estimated life of one hundred years would be 97 per cent or 98 per cent, and 85 per cent on a life of fifty years, the commission having also given consideration to the fact that there was no immediate prospect of the distribution system of the company becoming inadequate.

Valuation — Reproduction — Identical or equivalent plant.

In estimating the cost of reproduction of iron mains of a waterworks property for municipal purchase, the actual weights of the pipe should be used if the valuation is on the basis of replacing the identical plant and the weights that would be used in constructing a plant in accord with modern practice if the valuation is based on replacing the plant with an equivalent system.

Valuation — Reproduction — Identical or equivalent plant.

Neither the cost of reproducing the existing plant or system nor of replacing an existing system or plant by an equivalent one is final as determining the cost new or present value of a public-service property, but both may be of evidential value in determining the actual fair value thereof.

Valuation — Reproduction — Prices for pipe laid.

In valuing the property of a waterworks company for municipal purchase, the estimates of the commission engineers as to the cost of laying mains, based on actual inspection of conditions, constitute better evidence of the cost of reproduction than the evidence of the average cost of laying mains in a number of other places.

Valuation — Accrued depreciation — Reservoir.

The Commission placed a present value of \$8,000 upon a waterworks company's reservoir, the cost of reproduction of which was estimated by the Commission's engineers at \$9,787, the present value at \$6,753, based partly upon obsolescence due to deterioration of ground waters by open storage, the Commission, in fixing such valuation, taking into consideration the facts that the reservoir valued was not likely to become inadequate, and that it was of an uneconomical type which could be replaced by modern reservoir for about the same amount as would be required to reproduce the existing reservoir.

Valuation — Reproduction — Pavement over mains.

In estimating the cost of reproduction of a waterworks property for municipal purchase, the Commission cannot determine what weight should be given to the estimated cost of pavement over mains, where the record does not show that the pavement was actually cut through in laying the mains.

Valuation — Reproduction — Rock excavation.

The estimated cost of reproduction of rock excavation for the purpose of laying water mains, based upon records of the actual width of trenches, was held to be substantially correct where there was nothing to indicate that different conditions would prevail if the distribution system were constructed at the time of the valuation.

Valuation — Discount on bonds.

An allowance may be made for discount on bonds in the valuation of a public-service property for municipal purchase, where the discount is a normal and reasonable cost of getting money to finance the utility, where the utility is needed in the community, and where the money for financing it can be obtained on no better terms.

Valuation — Going value — Waterworks purchase.

The extent of accumulated losses actually incurred in building up the business, and the probable cost which would have to be incurred in an equivalent plant in building up the business to the point of a reasonable return, are among the more important factors which must be considered by the Commission in determining the allowance which should be made for going value.

Valuation — Going value — Officers' salaries.

In determining the accumulated losses incurred in building up the business for the purpose of determining the amount which should be allowed for going value of a waterworks plant to be taken over by a city, it was held that an allowance of \$2,000 per year for officer's salaries should have been included under operating expenses, as constituting a reasonable charge against the cost of building up the business.

Valuation — Going value — Depreciation.

In estimating the accumulated gains or losses of a public-service company in order to determine the allowance which should be made for going value in a valuation for municipal purchase, it is unnecessary to include depreciation in the computation, where the allowance therefor is already included among the operating expenses.

Valuation — Going value — Reproduction cost.

In fixing the final value of a public-service property for municipal purchase, consideration may well be given to the probability that it would cost between 5 per cent and 15 per cent of the total value of the physical plant to build up the business of a new utility under similar conditions, to a point where a reasonable return would be earned upon the investment.

Valuation — Going value — Percentage allowance.

An allowance of 20 per cent of the actual investment, with an overhead allowance of 15 per cent included in the investment, will not be made for going value where there is nothing in evidence with reference to the valuation of the particular property that warrants it.

Valuation — Engineers' estimates.

The conclusions of the Commission in fixing the valuation of a waterworks property for municipal purchase, are justified, although the results obtained by its engineering department upon which such conclusions rest are admittedly estimates.

Valuation — Early losses — Records.

The Commission is not justified in accepting conclusions as to the cost of building up the business of a public-service corporation based upon data reported by the company, not substantiated by a careful audit of its records.

Valuation — Reproduction — Cost new basis.

Accrued depreciation will not be disregarded in the valuation of a waterworks property for municipal purchase, on the theory that the plant will constitute a continuous property to be kept up from year to year by expenditures for maintenance.

Valuation — Fair value.

The fair value of the plant and business of a waterworks company for municipal purchase must be determined from the evidence bearing upon the value of the different elements which go to make up the final value of the property.

[January 30, 1915.]

PROCEEDING to determine and fix a just compensation to be paid to the Janesville Water Company by the city of Janesville for the property of such company actually used and useful for the convenience of the public; valuation fixed at \$265,000.

Appearances: W. J. Dougherty for city of Janesville; Jeffris, Mouat, Cestreich, and Avery, by Mr. Jeffris and Mr. Cestreich for the Janesville Water Company.

By the **Commission**: This proceeding arises from a resolution passed by the city council of Janesville, Wisconsin, May 15, 1914, of which a copy was filed with this Commission on May 18, 1914. The resolution recites that the majority of the

electors of the city of Janesville, voting on such question at a special election held on May 12, 1914, had voted in favor of the purchase of the plant of the Janesville Water Company by the city of Janesville, and that the Janesville Water Company was at the time of the election operating under an indeterminate permit, and had theretofore consented to the purchase of its plant by the city of Janesville. The resolution also instructed the city clerk to give notice of the determination to purchase the plant, to the Janesville Water Company and to the Railroad Commission by service of copy of the resolution.

Notice of hearing was issued on May 20, 1914, and hearing was set for June 24, 1914. This was postponed to August 10th, and hearings were held at Madison on that date and on August 25, August 26, October 9, October 28, and October 29, 1914. Appearances were: W. J. Dougherty, City Attorney, for the city of Janesville; Jeffris, Mouat, Oestreich, and Avery, by Mr. Jeffris and Mr. Oestreich, for the Janesville Water Company.

Argument in this matter was made orally before the Commission on January 4, 1915.

In reviewing the questions involved in this case, it may be well to give consideration first to the evidence before the Commission as it appears in the transcripts of testimony and in other available sources, and to give separate consideration to the arguments in the case. Consequently, the first part of the following discussion will deal with the case, exclusive of the arguments formally presented, and the latter part of the discussion will be reserved for consideration of the formal arguments.

In connection with the purchase of the property of the Janesville Water Company by the city of Janesville, it is necessary that the Commission give consideration to all lines of evidence which tend to show what is the fair value of the property. The value to be fixed must be the value of the going concern, and not the value of the physical plant, as an entity distinct from the business in which the company is engaged. To determine this fair value, consideration must be given to such elements as the

value of the physical property, the going value, the cost of securing money, etc.

As to the value of the physical property there are several lines of evidence. Of these, the actual investment, the cost of reproduction new, and the cost of reproduction new less depreciation, are the most important. With regard to the actual investment the records of the company furnish the evidence before the Commission. The cost of reproduction has been reported upon on various occasions by the engineering staff of the Commission, and the testimony of officers or employees of the company is also in evidence as to the cost of reproducing various parts of the equipment. The last valuation of the engineering department was made as of August 10, 1914. Subsequent to the hearings which were held in this matter, supplementary reports were made by the department, increasing its estimates of the cost of reproducing certain portions of the system, which will be discussed at a later point. Although more than one estimate of the engineering department as to the cost of reproduction and cost of reproduction less depreciation of the plant were before the Commission at the various hearings, it is thought best to use the valuation of August 10, 1914, as a starting point, giving consideration of course to the points of difference between this valuation and earlier estimates.

ACTUAL INVESTMENT.

At the hearing on August 10, the president of the company stated that the actual physical cost of material and labor in constructing the plant had been \$262,730, up to the time of that hearing. At the hearings it was developed that in some negotiations between the water company and the city of Janesville, taking place in or about the year 1892, the actual investment in the plant up to January 1, 1892, had been determined at \$184,658.57. This statement of investment to the extent, at least, that it pertains to investment made during the period of original construction, appears to have been taken from the vouchers of the Wisconsin Construction Company, by which company the original plant was built. According to the testimony introduced on behalf of the Janesville Water Company, the additions

to property from January 1, 1892, to the date of the hearing, cost \$78,071.43, making the total actual investment \$262,730. This did not include any allowance, apart from the costs of material and labor, for such items as engineering, interest during construction, etc.

An audit of the books and records of the Janesville Water Company by members of the Commission's accounting staff revealed a property and plant investment as of June 30, 1914, of \$263,947.94 less a total of salvage credits amounting to \$2,485.13, or a total investment of \$261,462.81. Property discarded appears to have been credited to property and plant at its salvage value only, instead of at its cost new. The effect of this practice has been to keep the difference between the original cost and the amount received for salvage permanently charged to property and plant. This excess of the cost shown on the books over the cost of the property at present in the system applies to the cost as shown in the testimony of the president of the company, and to the statement obtained by the Commission's auditor.

It has proved impracticable to obtain from the records of the company a statement of such excess, but the company's president testified that the only part of the plant that he knew of which had been replaced were pump foundations with an original cost of \$800 or \$900, the boilers, of which the original cost was not shown, and not more than ten hydrants.

The amount of salvage treated as a credit to property and plant in the auditor's report, \$2,485.13, would seem to indicate that the original cost of the property which had been discarded was a matter of several thousand dollars, although there is nothing to indicate the exact amount.

Aside from the items of discarded property mentioned in the testimony of the president of the company, it is understood that a river crossing of 8" pipe has been abandoned. This line was laid on a trestle bridge along the line of Fourth and Race streets, and was laid in a wooden box for frost protection. Notes taken by a member of the engineering staff in 1909 show that the cost of this 8" bridge crossing was \$2,267.07. The total possible salvage, even if all of the equipment had been

sold when the crossing was discarded, would hardly be nearly as large as the original cost.

The auditor's report and field notes indicate that a considerable amount of property must have been discarded, although the original cost of such discarded equipment could not be determined.

In the detailed list of vouchered expenditures submitted by the auditor, amounts of a total of \$5,262.68 were marked with a star, as having been, in his opinion, improperly charged to construction. On this point the president of the company testified that of the amount mentioned the total of doubtful items was \$1,010.06, and that the remainder was undoubtedly properly charged to construction.

From his testimony it appears that in the construction account there is an item of \$665.46 for changing from small to large pipe, and one of \$656.76 for lowering pipe. He stated that it might be fair to consider two thirds of these amounts as costs of reconstruction.

The two lines of evidence available as to the original cost of the property and plant then show a cost of \$261,462.81, taken from the auditor's report, and \$262,730 as stated by the president of the company. To arrive at the actual investment in the existing property it would be necessary to exclude from these amounts all improper charges to construction and the margin between the original cost and the salvage value of property which has been discarded. As previously stated, the exact amount of this cannot be ascertained, but there seems to be no doubt that it would be large enough to reduce the original cost of existing property by a considerable amount, and we think that it is very doubtful whether the actual original cost of property now in the system was much more than \$250,000.

COST OF REPRODUCTION.

The testimony of the president of the company fixes the cost of reproduction at 10 per cent above the actual investment, or \$289,003. In this total are included the elements discussed above which are not properly a part of the cost of the existing plant. In addition to \$289,003 the witness added 15 per cent for overhead expenses during construction, which were not

charged as distinct items in the construction of the original plant. This would bring the reproduction cost of the property and plant to \$332,353. The witness estimated that the cost of cutting through pavement in reproducing the plant would be approximately \$20,000, which would raise the cost of reproduction new to \$352,353. His estimate of depreciation accrued on the entire plant was 10 per cent of the cost new, or \$35,235, which would leave a present value of \$317,118. This is exclusive of nonphysical elements of value which will be discussed later, and of materials and supplies amounting to \$3,000, which would raise the cost of reproduction, less depreciation, to \$320,118.

The accounting practice of the company appears to have been to charge construction materials to construction as purchased, rather than as used. This being the case, the cost of materials on hand for construction purposes should not be added to the value of the plant as determined by the witness, as this would result in a duplication of the charging of such materials to property and plant.

There seems to be no necessity to consider in detail the various estimates of cost of reproduction which had been made by the engineering staff. Following is a copy of the final summary of the last valuation, made as of August 10, 1914.

	Reproduction Cost.	Reproduction Cost Less Depreciation.
A. Land	\$6,400	\$6,400
B. Transmission and Distribution	146,293	130,387
C. Buildings and Misc. Structures	38,446	32,000
D. Plant Equipment	16,259	9,809
E. General Equipment	3,977	2,740
F. Paving	6,257	5,507
Total	217,632	186,843
Add 15 per cent	32,645	28,026
Total	250,277	214,869
H. Materials and Supplies	2,865	2,681
Total	253,142	217,550
J. Non-Operating	225	225
Total	253,367	217,775

Note: Addition of 15 per cent to cover engineering, superintendence, interest during construction, contingencies, etc.

BUILDINGS AND LAND.

The objections raised to the engineers' estimate of the cost of buildings were relatively unimportant. Certain items, such as the interior trim of the station and certain costs of painting, were adjusted in the August 10th valuation. Although certain other estimates in connection with the cost of buildings were questioned, there has been no evidence presented which would lead us to make changes in the estimates of the engineering department. The only item which need be mentioned particularly at this point is that of brick work. The estimate on this did not include the same variety of brick as is now in the building, but the estimated cost of reproduction appears to be adequate.

Some question was raised with regard to the prices on land, but we see no reason for changing these. In an earlier valuation higher prices were used, but we do not believe that the price placed on the land in the valuation now under consideration was in any way unfair.

A number of items of office equipment were enumerated which had not been listed in the engineer's inventory, but the total value of these is so small as to have little effect upon the value of the entire property. So far as the record shows, the total discrepancy here was only a matter of a few dollars.

STATION EQUIPMENT.

The company questioned a number of items in the valuation of station equipment, but the only question of considerable importance had to do with the value placed upon the pumps. Others related principally to the estimated depreciation of various portions of the equipment. The allowances for depreciation on scales, steam piping, pumps, boilers, and a Sturdevant fan and engine were the only ones of importance which were questioned. No evidence was introduced to show what the company considers a fair allowance for depreciation on this equipment.

In the engineers' estimate of cost of reproduction less depreciation steam piping was depreciated on the basis of the average life allowed for boilers, which was a life of twenty-five years. Pumps were depreciated to 50 per cent on the basis of a forty-year life. This, according to the testimony of the engineer who

inventoried this portion of the property, included some allowance for obsolescence. It is understood that the pumps were part of the original plant, which would indicate that a depreciation of 50 per cent is not too great.

The Sturdevant fan and engine have been in use eleven years, and were secondhand at the time of their installation. A condition of 50 per cent seems ample for this equipment.

The most important items of station equipment are the pumps. The company claims an original cost of \$15,437.26 for these units, but this cost appears to include a number of items other than the pumps themselves. Among these are piping, of which the engineers estimated the cost new to be \$1,770, a condenser at \$469, two boiler feed pumps at \$232, pipe covering at \$107, cast-iron piping at \$155, breechings at about \$200, and suction and discharge piping which was valued by the engineers as part of the distribution system and estimated at about \$200. The original cost of the pumps appears to have included also the cost of a heater and an air pump, which were worth approximately \$500, but which are no longer part of the plant. The reproduction cost new, according to the engineers' estimates, of such property as was covered by the original cost of \$15,437.26, would therefore be approximately \$10,144, including \$6,500 for the pumps themselves. If the 15 per cent overhead is added to this, there would still be a discrepancy between the original cost and the estimated cost of reproduction, of about \$4,000, and, without the inclusion of the 15 per cent, the difference would be more than \$5,000.

In estimating the cost of reproduction of this equipment, the cost of pumps equivalent to those actually in use was used by the engineers. To replace the existing pumps with others having the same specifications would cost, according to the testimony, \$3,500 more than the figure used by the engineers. With a depreciated condition of 50 per cent the difference in cost new less depreciation would be half of this amount. The point at issue with regard to the estimated cost of reproduction of the pumps is one of the theory upon which the valuation of the physical property is made. With one conception of what is meant by cost of reproduction, the engineer, in arriving at his

estimates, would have to determine the cost of reproducing the identical property which he finds in the plant. With a different understanding of the meaning of the term, the engineer might estimate the cost of building an equivalent plant but not necessarily having the same details of construction as the existing plant.

In the present case, there is nothing to indicate that the original investment in the pumps was unwisely made, nor that a reasonable degree of regard for the ultimate economy of construction would have required the installation of different pumping equipment. Consequently, it seems only reasonable to accept the actual cost of the pumps or the cost of replacing them by identical units, as evidence bearing upon their value as a part of the plant to be transferred. What it would cost to replace them by equivalent units of equal capacity, but perhaps of different design, is also of evidential value in fixing the fair value of the plant.

DISTRIBUTION SYSTEM.

The most serious differences between the cost of reproduction and cost of reproduction less depreciation, as found by the engineering staff, and the values which the company considers fair, are concerned with the distribution system. The objections offered to the estimates of the engineering department are of such importance as to merit very careful review. In what follows, each objection of any importance has been given separate consideration.

LENGTHS OF PIPE.

The lengths of pipe used in the valuation as of August 10, 1914, were the actual measured lengths determined by the company, except that a certain length of main leading to the Institute for the Blind was excluded, as being the property of the state. It was suggested at the hearing that the state had been given a special rate for this service, but the testimony is not definite on this point. Certain small mains appear to have been constructed at the expense of private parties, but in some instances, at least, these were sold to the Janesville Water Company.

The testimony of the city engineer of the city of Janesville indicates that a number of extensions of small mains were made at the expense of consumers, of which there is no record of any transfer to the company. The total length of such extensions was not stated. Some of the larger extensions mentioned in his testimony have been transferred to the company. To state the cost of all extensions which appear not to have been transferred is impracticable, but the total would apparently be several hundred dollars. Undoubtedly an equitable handling of the situation requires that consideration be given to this situation. The view of the company is expressed in the testimony of its president, to the effect that wherever consumers put in pipe in the streets the water company had given some consideration which made it proper to call all mains the property of the company.

DEPRECIATION OF SMALL MAINS.

In the August 10 valuation the mains of sizes smaller than 4" were depreciated to 50 per cent. The member of the staff who handled this portion of the valuation testified that the physical depreciation of this pipe would amount to 50 per cent, that such pipe is not usually considered to have a life of more than thirty or forty years, and that he understood that there were places in Janesville where it had not lasted more than ten years. The valuation shows a total cost new of mains 2" or less in diameter of \$19,017, and a cost new less depreciation of \$9,508. The life of such mains is necessarily estimated, as there is no means of predetermining how long any main will last in service. In such cases as this the judgment of the engineer making the valuation must necessarily play an important part. Other engineers might draw different conclusions from the same set of facts. It is probably true that in the judgment of some engineers a longer life could be assigned to these small mains, and we think it only fair to take cognizance of the fact that a somewhat different present value might be correct in the judgment of other engineers. The margin of \$9,509 between present value and cost new is so great that any material increase in the estimated percentage condition would have an important bearing upon the depreciated value of the entire plant.

DEPRECIATION OF 4" MAINS.

In an earlier valuation the depreciated condition of 4" cast-iron mains was placed at 98 per cent of cost new, but in the August 10th valuation this was dropped to 85 per cent. The estimated length of life of such mains was assumed, in making the earlier valuation, to be 100 years, but in the last valuation a life of 50 years was assumed. Relatively little is definitely known of the life of cast-iron mains. Various competent engineers have estimated the life at from 50 to 100 years. With an assumed life of 100 years the depreciated condition, on a 4 per cent sinking fund curve, would be about 97 or 98 per cent, but if a 50-year life is assumed the condition per cent would fall to 85. We feel that consideration should be given to the fact that Janesville is not a rapidly growing city, and that there is, therefore, no immediate prospect of the 4" distribution system becoming inadequate. If the 4" mains were considered to be in 90 per cent condition, the reproduction cost less depreciation of this item of property would be increased approximately \$120, including the cost of laying. Values on mains should probably be given the same percentage condition as the mains on which they are placed.

PRICE OF CAST-IRON MAINS.

In an earlier estimate by members of the engineering staff, the price of 6" cast-iron pipe was placed at \$28.30 per ton, but in the August 10 valuation the estimated cost was reduced to \$26 per ton. The engineer in charge of this portion of the valuation testified that two considerations which caused him to conclude that \$26 per ton was a fair price were the lowering of the five-year average price of pipe since the date of the earlier valuation, and the ability of water utilities to purchase pipe at lower prices than the trade journal quotations. With adequate allowance for cartage and for the express of the Janesville freight rate over the Chicago rate from pipe-shipping points, the prices, based strictly on trade journal quotations, would be about \$2 per ton above the price included in the August 10th valuation. Applied to all cast-iron pipe, this would increase the cost of reproduction, at the weights included in that valua-

tion, by a little over \$5,000, and the present value by over \$4,800.

WEIGHTS OF PIPE.

In the earlier estimates of the cost of reproducing the distribution system, the weights of cast-iron pipe were assumed to be the scale of weights known as "American Waterworks Association, Class B," with the customary 2 per cent total overweight allowed in the standard specifications governing payment for purchases. In making the August 10 valuation, the engineer who made the estimate for the distribution system made use of the reported actual weights of the original pipe, including all of the 16", 12" and 10" pipe, about 60 per cent of the 8", half of the 6", and two thirds of the 4", pipe. The information on actual weights of pipe was obtained from papers in the possession of the company in 1909, sworn to by one Morton E. Cobb, in Boston, February 26, 1895, purporting to be taken from vouchers and books used at the time of the construction of the plant.

The unit weights thus obtained were applied to the total amount of pipe. If the weights to be used were those of present Class B pipe, American Waterworks Association specifications, with 2 per cent allowance for overweight and no deduction for length of specials, the excess of estimated weight over that used in the August 10 valuation would be 122,259 tons. At \$26 per ton, this would add \$3,179 to the cost new, and at \$28 it would add \$3,423. Additions to present value would be about \$100 less.

The question of what weight of pipe should be used is similar to that which has been raised with regard to the price to be placed on pumps. If the valuation purports to represent the cost of replacing property identical with that in the existing system, the prices used should provide for replacing the pumps as they stand and the distribution system at the actual weights of pipe. This would mean that the weights of pipe used in the valuation were properly used, and that the price placed upon pumps should be increased.

If, on the other hand, the valuation is assumed to represent

the cost of replacing the existing system with an equivalent system, the correct method was used in valuing the pumps, but the weights of pipe should be such weights as would be used in a system to be constructed in accord with modern practice. Neither method is final as determining the cost new or present value of the property, but both may be of evidentiary value in the determination of actual fair value of the property.

PRICES FOR PIPE LAYING.

The prices used for estimating the cost of laying mains represented the judgment of the engineer in charge of this portion of the valuation after considerable study of local conditions, and the reasons for his use of the prices used were stated quite fully in his testimony. In other cases it is true that higher prices were used, but this was explained as having been done because of differences in soil conditions, depths of pipe, and in other conditions. The cost of laying mains under conditions which would prevail in Janesville could be estimated more closely by an engineer after an actual inspection of conditions in that city, than could be done from any facts presented at the hearings. There is nothing in the record, aside from the testimony of the engineer who handled this portion of the valuation, sufficient to show what a fair allowance for laying mains would be. According to prices which in some measure represent the average cost of laying mains in a number of other places, an estimate of the cost of laying mains might place the cost of reproduction at about \$3,500 above the engineer's estimate. It does not appear, however, that such prices would give the proper weight to conditions prevailing in Janesville, and the result of an estimate based on them is included merely to show what the effect would be of estimating the cost of laying mains on a somewhat different basis. The engineer's estimates, although more conservative than the company wishes to accept, are the best evidence before the Commission on this point, and we believe they should be given considerable weight.

DEPRECIATION OF METERS.

Water meters were included at a minimum service value of
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10 per cent on the assumption that, as their average age was as great or greater than the usual life of such meters, there could not be much value remaining. It appears, however, that the meters are in fair condition and performing the service required of them, and there seems to be no reason to expect that they will have to be discarded for some time to come. Although there may be individual meters or even a considerable number of meters which will soon have to be discarded, we hardly think that a condition percentage as low as that fixed in the August 10 valuation will be adequate. At 25 per cent condition the present value of the meters would be increased \$32. Probably such an increase would not be unfair.

DEPRECIATION OF RESERVOIR.

The open reservoir, of which the cost of reproduction was estimated to be \$9,787, including valve house and accessories, was given a condition of 69 per cent, or a present value of \$6,753. This was depreciated on the basis of a 50-year life, and in arriving at this basis the engineer in charge of this portion of the valuation took into consideration the element of obsolescence because ground waters are usually deteriorated by open storage. That this condition would be worse as the reservoir becomes older was not shown. In this connection we have to remember that Janesville has not been growing rapidly, and that there is no immediate cause to expect that the reservoir will become inadequate, or that it will be for some time to come any less satisfactory as a means of storing water than it has been.

The testimony indicates that the reservoir is of an uneconomical type which would probably not be constructed at the present time, and that a covered reservoir of proper design could be constructed (for about the same amount as would be required to reproduce the existing reservoir). This fact should undoubtedly be considered. In the light of all available facts we believe that the cost of reproduction, less depreciation, of the reservoir, should be placed at about \$8,000.

PAVING.

After the hearings, a correction in the estimates placed on

paving was submitted by the engineering department. This places the cost new of paving at \$6,419, based upon the company's statement of amount of paving, but not including any allowance for streets repaired with crushed stone. If allowance were made for this, the cost of reproduction of paving would be \$7,190, and with the same condition of depreciation as in the August 10 valuation the cost of reproduction less depreciation would be \$6,327. The record does not show that any of this paving has actually been cut through in laying water mains, and it is not clear therefrom just how much weight should be given to this item in the valuation.

ROCK EXCAVATION.

The engineer's estimates as to the cost of rock excavation were questioned by the company. These estimates were based upon as complete information as has been available, both as to the number of lineal feet of such trench and as to the width and depth. As far as the record shows, the engineer's estimate of the number of feet of rock excavation appears to be correct. The only serious question regarding rock excavation relates to the width of trenches. The testimony of the engineer in charge of this portion of the valuation indicates that his estimates were based upon records of the actual width of trenches in the original construction work. There is nothing to indicate that any different conditions would prevail if the distribution system were to be reconstructed at this time. It seems, therefore, that the estimate of the cost of rock excavation is substantially correct.

POSSIBLE ADDITIONS TO ESTIMATES OF COST OF REPRODUCTION.

From the foregoing analysis of the engineers' estimates, it appears that different conclusions as to cost of reproduction and cost of reproduction less depreciation might have been reached by the use of somewhat different methods of valuation, and different theories as to what the cost of reproduction should represent. Following is a summary of the cost new and present value additions which we think might be made by engineers under such different circumstances:

	Cost New.	Present Value.
Pumps	\$3,500	\$1,750
4-inch mains, including laying		120
Cast-iron pipe prices	5,000	4,800
Cast-iron pipe weight @ \$26	3,179	3,080
Cast-iron pipe—addition to above item if \$28 price used	244	240
Cost of laying mains	3,500	3,380
Meters		82
Reservoir		1,247
Paving	933	820
Total of above	16,356	15,519
Add 15 per cent	2,453	2,328
Total	\$18,809	\$17,847

Certain of the possible additions shown above seem to be inconsistent, although each item might, under different plans of valuation, be given weight, the total of additions contains items which, as previously pointed out, would not be included in a valuation based upon any one method. Additions to distribution system weights can be justified only on the assumption that the valuation is to represent the cost of putting in, not exactly such a plant as the original, but its present day equivalent. On the other hand, additions to pump values can be made only if it is assumed that the original property is to be exactly reproduced, and no equivalent but not identical equipment used.

The greatest possible additions to the engineers' estimates which we think can be justified, therefore, are the amounts shown above less the items for pumps, and a proportionate share of the 15 per cent overhead, or \$14,784 to cost new and \$16,009 to present value. That is, the most liberal estimates of cost of reproduction, new and less depreciation, which we think should be considered in arriving at the fair value of the property, are \$268,151 and \$233,784, respectively, with some possible further allowance for condition of small mains. These include paving costs of \$8,268, new, and \$7,276, present condition, with the proper proportion of overhead costs included. As previously stated, the record does not show that any of this was paid for by the company, and it is equitable to give consideration to this condition. If the paving were to be excluded the cost new and present value would be respectively \$259,883 and \$226,508.

VALUE CLAIMED BY COMPANY.

The testimony of the president of the company is to the effect that the fair value of the property is about \$385,000. To obtain this amount he adds to his estimate of cost of reproduction less depreciation, as previously discussed, of \$317,118, an allowance of about 20 per cent for going value, and an allowance for materials and supplies which he estimates should be about \$3,000, making a total of very nearly \$385,000. At another point in his testimony the witness stated that the fair value of the property would be between \$380,000 and \$390,000.

INTANGIBLE VALUES.

The company claims that allowance should be made for various elements of intangible value, among which are going value and discount on bonds. Neither of these seems to require any very extended discussion at this point. With regard to discount on bonds, the Commission has taken the stand that it may be reasonable to recognize this element where the discount is a normal and reasonable cost of getting money to finance a utility where the utility is needed in the community, and where the money for financing it can be obtained on no better terms. In an earlier investigation of the Janesville Waterworks, 7 W. R. C. R. 628-639, the question of discount on bonds was considered by the Commission, and the conclusion was stated as follows: "Some allowance probably will have to be made in fixing the value of the plant for the discount on bonds, but it is questionable whether all of the \$19,600 accounted for should be considered as a plant investment."

There are no facts before us in the present case which would lead us to alter the conclusion above quoted. There seems to be no reason to question the propriety of issuing bonds under the circumstances under which those in question were issued. Authorities are not by any means agreed that the discount incurred in floating bonds should be permanently charged to capital. The difficulties which would be met with if this policy were pursued in the case of refunding issues are, of course, apparent, in that the amount of discount charged to capital might eventually be entirely out of proportion to the actual value of the property.

The total amount of discount on bonds which the company claims should be given consideration in this case is \$20,600, and we believe it fair to give some weight to the fact that bonds were sold at a discount to provide money for an enterprise which was reasonably necessary for the public service.

With regard to going value, two exhibits taken from the earlier decision mentioned above and appearing on pages 640 and 641 of that decision were filed on behalf of the company. It should be stated here that in the earlier decision, no audit was made under the direction of the Commission to determine the accuracy of the company's reported statements of earnings and expenses, and the two exhibits mentioned were computed from the statements furnished by the company. At the present time, the Commission has available the information obtained by its auditor regarding the actual earnings and expenses of the company. Following is a table showing for the various years noted: (1) The amount available for return after depreciation had been provided for on a basis similar to that used in general by the engineering staff in arriving at the depreciated condition of the property, which seems to be an adequate allowance for depreciation for the purposes of this case; (2) the investment at the beginning of each of the years noted; and (3) the rate of return upon each investment for each year. Of course, if the average investment for the year had been used, instead of the investment at the beginning of the year, the rates of return shown would have been slightly smaller, but not enough so to seriously affect the results obtained.

Year.	Available for Return.	Investment, beginning of Year.	Rate of Return.
1892	\$ 7,972.09	\$184,658.57	4.3 per cent.
1893	11,741.25	185,453.72	6.3 " "
1894	13,430.82	192,624.50	7.0 " "
1895	12,503.41	196,884.72	6.4 " "
1896	14,688.29	208,291.14	7.0 " "
1897	15,233.09	208,539.34	7.3 " "
1898	14,835.38	212,317.64	7.0 " "
1899	14,781.07	215,442.22	6.9 " "
1900	18,328.88	217,347.17	8.4 " "
1901	17,555.51	219,367.27	8.0 " "

Year.	Available for Return.	Investment, beginning of Year.	Rate of Return.
1902	16,680.25	226,638.92	7.4 per cent.
1903	16,269.54	228,942.38	7.1 " "
1904	16,443.88	241,628.90	6.8 " "
1905	17,560.85	242,390.21	7.2 " "
1906	20,085.02	243,197.80	8.2 " "
1907	17,567.77	245,530.32	7.1 " "
1908	22,354.04	254,746.49	8.8 " "
1909	20,945.14	255,793.71	8.2 " "
1910	23,321.25	257,407.12	8.0 " "
1911	26,252.74	259,097.16	10.1 " "
1912	20,534.83	260,746.66	7.9 " "
1913	20,243.97	261,355.50	11.2 " "
6 mo. 1914	14,318.56	261,440.31	11.0 " "

There are various lines of evidence which should be considered in determining the allowance which should be made for going value, among which the more important are probably the extent of accumulated losses actually incurred in building up the business and the probable cost which would have to be incurred in an equivalent plant in building up the business to the point of a reasonable return. With regard to the financial history of the company since January 1, 1892, we have the records obtained by the Commission's auditor. In making his audit, he excluded from the operating expenses of the company salaries paid to such of its officers as were not directly concerned with the detailed administration of the plant's affairs, and these salaries were included as a deduction from gross income. The reason for using this procedure was that, for a considerable period, the company has been paying large salaries to certain of its officers, and in the case above cited, 7 W. R. C. 628-648, the Commission held that not more than \$2,000 of the salaries paid to such officers should be reasonably charged to operating expenses. In making a computation of accumulated gains or losses, therefore, the auditor's figures have been modified to the extent that \$2,000 per year have been included under operating expenses as constituting reasonable charges against the cost of conducting the business. The effect of this has been to reduce the gross income as shown by the auditor's report by \$2,000

for each year. Inasmuch as depreciation upon a basis similar to that used by the engineering staff in making its valuation was included among the operating expenses shown in the auditor's summary of income accounts, it is not necessary to include depreciation in a computation of accumulated losses or gains; neither is any allowance for depreciation included in the column headed, "Available for Interest."

There can be no question that it would cost a considerable amount to build up a business under conditions similar to those prevailing in Janesville, but where a new utility was to be installed to meet a hitherto unsupplied demand for service, to the point where a reasonable return would be earned upon the investment. To determine how much this cost would be is a matter of estimate. From such information as is available on this subject, it seems that the cost of building up such a business would probably be between 5 per cent and 15 per cent of the total value of the physical plant, and consideration may well be given to this fact in fixing upon the final value of the property.

The company claims an allowance for going value of about 20 per cent, of the actual investment with an overhead allowance of 15 per cent included in the investment. We see no reason for any extended discussion of this claim, as the amount of going value which should be allowed should be determined as largely as possible from the evidence presented in each particular case, and we find nothing in the record in this case which would justify as large an allowance as that claimed by the company.

ARGUMENTS PRESENTED RELATIVE TO VALUATION.

The matters involved in this case, the principal ones of which have been discussed above as far as the testimony and the facts in the Commission's filed had a bearing upon the case, were argued before the Commission by attorneys for the water company and for the city of Janesville on January 4, 1915. The arguments presented will be briefly reviewed here, so far as they may influence the conclusions stated above, which were drawn from the records in the case. The argument for the water com-

pany dealt with a number of points, some of which should be reviewed in this connection.

The company seems to feel that the engineering staff of the Commission or certain members of it acted in this case in a partisan way, and that the case virtually resolved itself into a contest between the Janesville Water Company, on the one hand, and the Commission's engineers and the city of Janesville, on the other. It is to be presumed that in the cross-examination of the various members of the engineering staff the company's attorneys touched upon those points in the valuation at which they felt that the engineers had construed matters in favor of the city. Full consideration has been given to all of these points, and we do not believe that the claim that the engineering department or any members of the staff were biased in this matter has any foundation. It might be said that the attitude of the company in this case has been to reflect upon the fairness of the estimates made by the engineers at every possible point, and that if the proceedings were given the appearance of a contest between the company's attorneys and members of the engineering staff, this was due, in our opinion, to the manner in which the attorneys continually referred to the work of the engineering department. Certain phases of the valuation made by the engineering department have been reviewed, and possible modifications suggested in what has gone before, but we do not feel that the company has shown that any partisan motive was responsible for any of the conclusions reached by the engineering department. The results of the engineers' work in connection with this case have also been criticized in the argument of the company's attorneys, because of the fact that the results obtained by the engineering department were admittedly estimates. The argument was that little, if any, consideration could be given to any estimate, because an estimate could not be based upon facts sufficiently reliable to justify the adoption by the Commission of the conclusions reached. Nevertheless, in their claim for a valuation of about \$360,000, which is the amount upon which the attorneys lay most stress in their argument, practically the only evidence of which they have made use in drawing their conclusions with regard to such important items as going

value, and the additional cost which would be involved in reproducing the property at the present time and under present prices, was the opinion or estimate of the president of the company. We do not consider it necessary to go into a detailed discussion of the elements making up the \$360,000 of value claimed in the argument, except to note that a somewhat smaller total is reached than in the testimony of the president of the company. The methods followed are not materially different from those which have already been discussed in connection with the claim that the fair value of the property would be from \$380,000 to \$390,000.

Mention was made in the argument of the fact that a number of years had been required to build the business up to the point of a reasonable return, and that during a considerable part of the elapsed life of the property earnings were less than what might be considered a fair return. It should be mentioned, however, that these conclusions were based upon certain exhibits which were before the Commission at the time of the earlier decision in regard to the rates of this company, and which the results obtained by the Commission's auditor show to have been incorrect. Under these conditions, we would hardly feel justified in accepting conclusions based upon data reported by the company, which is not substantiated by a careful audit of its records.

With regard to depreciation, the argument on behalf of the company has been directed along two very different lines. In one portion of the argument, the attorneys showed that the "horizontal" depreciation in this case as fixed in the final valuation by the engineering staff amounted to about 14 per cent, and that this was greater than in any other of a list of cases cited by the attorneys, which had been before this Commission. Certain modifications of the present value as placed upon the physical property by the engineering staff have already been discussed. The effect of such changes as these in the present value would be to materially decrease what the attorneys for the company have termed the "horizontal" depreciation, and the Commission believes that full consideration should be given to the condi-

tions pointed out above in regard to changes which might reasonably be made in the present value.

The other side of the company's argument regarding depreciation is that no such thing as depreciation should be recognized in this case. The argument is that the plant will constitute a continuous property to be kept up from year to year by expenditures for maintenance, and that because it is such a continuous property which probably will never be entirely scrapped at one time, it should be considered that there has been no element of depreciation which should be deducted from the cost of reproduction. Difficult as it may be to measure the extent to which the property of the water utility has depreciated in service, we cannot agree with the argument that there is no depreciation to be considered. Certainly, some of the units of property, if not all, have passed a portion of their useful life, and practically all will eventually have to be replaced. They have a smaller wearing value at the present time than new property of an equal grade would have. To be sure, it is difficult to determine the exact extent of depreciation. We do not know that anyone would undertake to fix a definite amount for depreciation, and claim that this was the exact amount of the depreciation which had accrued. Because of this difficulty in arriving at the exact extent of the depreciation, the consideration which should be given to the fact of physical depreciation cannot be measured perhaps to a matter of dollars and cents with absolute accuracy. That some depreciation has occurred, however, is unquestionable. The general practice of the engineering profession appears to be to use methods similar to those followed by the Commission's engineering staff, and all that is claimed for the results obtained is that they represent estimates made in the light of the best judgment of the engineers concerned in the valuation. With such modification as is involved in the changes in present value which have been discussed in an earlier part of this decision, we think that the fact of physical depreciation should be given consideration in determining the value of this plant, and that the best evidence as to the extent of such depreciation is the valuation made by the engineering staff with the modifications previously discussed. The president of the company in

his testimony in this case stated that in his opinion the extent of depreciation would amount to about 10 per cent of the cost of the property. This seems to be at variance with the later argument on behalf of the company, but coincides rather closely with the amount of depreciation estimated by the engineering staff if the modification suggested in the earlier part of this decision are adopted.

The argument on behalf of the city of Janesville calls attention to a number of matters in this case which it does not appear necessary to review at the present time. Consideration has been given in detail to both arguments, and we do not see that any good purpose would be fulfilled by elaborating further upon them in this discussion.

FAIR VALUE OF THE PLANT AND BUSINESS.

The fair value of the plant and business, as has been stated in many other cases, must be determined from the evidence bearing upon the value of the different elements which go to make up the final value of the property. In this case, the valuation as fixed represents what the Commission considers a fair value of the property as of July 1, 1914, exclusive of materials and supplies on hand, but inclusive of all records of the company reasonably necessary for the conduct of the business by the city of Janesville. The amount of materials and supplies on hand at the time of the transfer of the property can be determined by a separate inventory, as can also the extent of additions to the property and plant since July 1, 1914, and up to the date of the transfer. In the light of all the facts which have been available in this case, we conclude that the fair value of the property, limiting the term "fair value" as stated above, is \$265,000.

ORDER.

It is therefore ordered, that the just compensation to be paid to the Janesville Water Company by the city of Janesville for the taking of the property of said company actually used and useful for the convenience of the public, which property consists of the items above mentioned, excepting, as stated, the material and supplies on hand on the 1st day of July, 1914, be and

the same is hereby fixed at two hundred sixty-five thousand dollars (\$265,000).

It is further ordered, that in addition to the above compensation, the material and supplies on hand at the date of the taking of the said plant, and the new additions to the plant that have been made since July 1, 1914, be paid for by the said city of Janesville at such prices as may be agreed upon by the parties themselves, or, in case the parties fail to agree upon the price, at such price as the Commission shall fix by supplemental order.

It is further ordered, that the said Janesville Water Company transfer possession of the said property to the said city of Janesville on or before the 1st day of April, 1915.

It is further ordered, that the said city of Janesville pay to the said Janesville Water Company the compensation herein fixed, and the price of said material and supplies and said additions to said plant, within six months after the date hereof, with interest at the rate of six per cent (6%) per annum from the date of the taking possession of said plant by said city, until the same is fully paid.

Dated at Madison, Wisconsin, this 30th day of January, 1915.

Railroad Commission of Wisconsin.

ILLINOIS PUBLIC UTILITIES COMMISSION.

IN RE AMENDED APPLICATION OF THE MAROA MUTUAL TELEPHONE COMPANY.

[No. 3,080.]

Security issues — Increase of capital stock.

A telephone company was authorized to retire its common capital stock in the amount of \$20,000, and to issue in exchange therefor its common capital stock to the amount of \$25,000 where it appeared that the company had theretofore actually expended the sum of \$5,000 from its income, not directly or indirectly secured or obtained from the issue and sale of securities, for the construction, completion, extension, and improvement of or addition to the facilities of the company, and where it appeared further that none of said expenditures were, in whole or in part, reasonably chargeable to operating expenses or income.

[January 21, 1915.]

APPLICATION for authority to issue stock to the amount of \$25,000 and for the retiring and cancelation of the original common capital stock of the company to the amount of \$20,000; granted.

By the **Commission**: This matter having come on to be heard before the Commission upon the amended application of the petitioner herein, the said Maroa Mutual Telephone Company, asking for an order of the Commission authorizing the issue by the said Maroa Mutual Telephone Company of its common capital stock in the amount of five hundred (500) shares of the par value of fifty dollars (\$50) per share, total twenty-five thousand dollars (\$25,000); and for the retiring and cancelation of its original common capital stock in the amount of five hundred (500) shares of the par value of forty dollars (\$40) per share, total twenty thousand dollars (\$20,000), and it further appearing to the satisfaction of the Commission that the company has heretofore actually expended moneys from its income not directly or indirectly secured by or obtained from the issue and sale of stock, stock certificates, bonds, notes, or other evidences of indebtedness, for the construction, completion, extension, and improvement of, or addition to, the facilities of the said Maroa Mutual Telephone Company, the sum of five thousand dollars (\$5,000);

And the petitioner having presented such testimony and evidence as it was advised and as the Commission required, and said cause having been duly submitted for disposition, and it appearing to the satisfaction of the Commission that the petitioner is a corporation duly incorporated and existing under and by virtue of the laws of the state of Illinois, and that the allegations of the petitioner are true; and it further appearing to the satisfaction of the Commission that none of said expenditures is, in whole or in part, reasonably chargeable to operating expenses or to income;

It is therefore ordered by the State Public Utilities Commission of Illinois, as follows:

Section I. That the petitioner herein, the said Maroa Mutual Telephone Company, be and the same is hereby authorized to retire its present common capital stock in the amount of twenty

thousand dollars (\$20,000), comprising five hundred (500) shares of the par value of forty dollars (\$40) per share, and to issue in exchange therefore its common capital stock to the amount of twenty-five thousand dollars (\$25,000), to be divided into five hundred (500) shares of the par value of fifty dollars (\$50) per share; and that all of the stock hereby authorized shall be the entire capital common stock of said company and in exchange for the same stock of said company.

Section II. That all the certificates of the original stock of twenty thousand dollars (\$20,000) shall, as soon as the certificates of the new stock herein authorized are issued in exchange therefor, be cremated or canceled, and that a certificate of such cremation or cancelation be furnished to this Commission.

Section III. It is further ordered that the petitioner herein, before the issue and delivery of any of the capital stock hereby authorized, which amount shall include the total of the new stock of twenty-five thousand dollars (\$25,000), shall cause to be printed, stamped, or engraved on the face of each of said certificates of stock, for their proper and easy identification, the following:

“State Public Utilities Commission of Illinois.
Authorization Number 84.
1915.”

Section IV. It is further ordered that the said Maroa Mutual Telephone Company be and the same is hereby charged an amount equal to ten cents (10c) for every one hundred dollars (\$100) of the capital stock authorized by this order to be issued, namely, twenty-five thousand dollars (\$25,000), and the same shall be paid into the state treasury before any of such stock shall be issued.

It is further ordered that this order shall be signed by the acting secretary of this Commission, and authenticated by its seal.

By order of the Commission this 21st day of January, 1915, dated at Springfield, Illinois.

KANSAS PUBLIC UTILITIES COMMISSION.

J. S. WEST

v.

THE MISSOURI & KANSAS TELEPHONE COMPANY.

[Docket 928.]

Pleading — Demurrer.

A demurrer is not a proper pleading to file to a complaint or petition before the Kansas Commission.

Parties — Leave to bring in.

The complainant in a proceeding to compel physical connection between telephone lines was, on motion to dismiss the complaint for lack of jurisdiction over necessary parties, given leave to bring in such parties either by joining them, by their consent, as parties complainant, or, in case of their refusal so to join, by making them parties respondent.

[January 14, 1915.]

HEARING on motion to dismiss complaint for lack of jurisdiction over certain parties in a proceeding to compel physical connection between the lines of telephone companies: leave to bring in additional parties and to amend complaint; granted.

ORDER.

By the **Commission**: Be it remembered: That on this 14th day of January, 1915, this matter coming on to be heard upon the demurrer to the complaint and motion to dismiss by the respondent, and the Commission, having considered the complaint and the demurrer and motion thereto, finds that a demurrer is not a proper pleading to file to a complaint or a petition before this Commission, but further finds that the documents filed by respondent are in fact a motion to dismiss for the want of jurisdiction of the Commission over the Columbus Local of the Cherokee County Mutual Telephone Company and the Cherokee County Mutual Telephone Company, and that the complaint seeks to require the respondent to connect its long-distance toll line to the switch board of the Columbus Local of the Cherokee County Mutual Telephone Company for the benefit of the subscribers thereof and of the Cherokee County Mutual Telephone Company; and the Commission further finds that the

Columbus Local of the Cherokee County Mutual Telephone Company and the said the Cherokee County Mutual Telephone Company are necessary parties to a proper determination of the matters complained of by complainant, and are necessary parties to this proceeding to enable this Commission to do substantial justice in the matters complained of.

It is therefore by the Commission considered and ordered: That complainant do have, and is hereby given, leave to make said Columbus Local of the Cherokee County Mutual Telephone Company and the Cherokee County Mutual Telephone Company parties to this proceeding, either by joining them, by their consent, as parties complainant; or, in case of refusal so to join, by making them parties respondent with the Missouri & Kansas Telephone Company, and complainant is given leave to further amend his complaint as he may desire.

It is further by the Commission considered and ordered: That thirty days be, and the same are hereby, given to complainant to so amend his complaint.

By order of the Commission, C. F. Foley, James A. Cable, John M. Kinkel, Commissioners.

LOUISIANA RAILROAD COMMISSION.

IN RE APPLICATION OF TELEPHONE & TELEGRAPH COMPANY.

[Informal Ruling Q-31.]

Service — Transferring money by telephone.

A telephone company was authorized to discontinue the practice of transferring money by telephone, on the ground that that character of business is not a function of telephone service, it appearing that whatever business of that character had been done was for accommodation.

[January —, 1915.]

INFORMAL application for discontinuance of service of transferring money by telephone; granted.

P. U. R.—14.

Jan. 20, 1915.

The Honorable Railroad Commission of Louisiana,

Mr. Henry Jastremski,
Baton Rouge, La.

My Dear Sir:—

During the past few years, this company has on various occasions transferred money between points in this territory, when application was made between the hours of 8 A. M. and 5 P. M., Sundays and holidays excepted.

The amount of business we have handled by this plan is negligible, and the plan of transferring this money was experimental on the part of the company, and done more from the standpoint of accommodations to its patrons than any other.

This character of business is not a function of telephone service, and the business that we have done has demonstrated to us that it cannot be satisfactorily carried on by the organization that we have for the operation of our telephone system.

This decision was not reached until a careful analysis of the business had been made, and after it became apparent to us by actual experience that the transferring of money by telephone, as it is commonly called, was not a function of the telephone business, and that the organization and the facilities of this company are such as to make the continued handling of this class of business impracticable.

As stated above, the business done was small and the plan experimental, and for that reason no application was ever made to your Commission to fix a tariff for this class of business, nor, so far as we are able to ascertain, has your Commission ever given its approval or issued any order in relation to the same.

For the reasons outlined above, we have decided that, effective February 1, 1915, the plan of sending money by telephone will be discontinued.

Our purpose in taking the matter up with you and explaining the situation in detail is to ask that you approve our action, if, in your opinion, such approval is necessary, and also that you may be in a position to answer any inquiries that may be addressed to you upon this subject.

Yours very truly,
General Manager.

Mr. C. A. Stair, G. M.,
Cumberland Telephone & Telegraph Co.,
New Orleans, Louisiana.

Dear Sir:—

With further reference to your letter of the 20th concerning the "transferring of money by telephone," which amount of business handled by this plan, as stated in your letter, is negligible. I beg to advise that this matter was taken up by the Commission at a session held this day. After due consideration the Commission held this character of business is not a function of telephone service, and that, as whatever business of this character had been done by your company had been done from a standpoint of accommodation, your company could not be compelled to continue this phase of its business. Under the circumstances, your company may discontinue this service without objection from the Commission.

Very truly yours,

Henry Jastremski,

Secretary.

MAINE PUBLIC UTILITIES COMMISSION.

IN RE EASTERN MAINE RAILROAD.

Railroad location — Approval.

The location of a portion of a railroad was approved, it appearing that the company had in all respects complied with the law and that the new railroad, except at the point of beginning, would not approach the line of the objecting company nearer than 15 miles, and that it would not run in the same general direction.

[January 19, 1915.]

PETITION for approval of railroad location; granted.

By the **Commission**: The Eastern Maine Railroad is a corporation organized under the provisions of chapter 188 in the Private and Special Laws of 1911, which charter, so granted, was amended and extended by chapter 86 of the Private and Special Laws of 1913. The road, as described in the charter, would be about one hundred and eight (108) miles in length, beginning at Houlton, in the county of Aroostook, and ending

in the city of Brewer, opposite Bangor in the county of Penobscot.

The portion thereof which is under consideration in the petition in this matter begins at Houlton and ends in Bancroft, each in the county of Aroostook, and also passes through Hodgdon, Cary, Amity, Haynesville, Township No. 111, Range 2, Orient, and Weston.

Upon this petition a hearing was ordered for Friday, January 8, 1915, at the offices of this Commission in Augusta, and notice as ordered was duly given and proved. At the time and place of such hearing, the petitioner was represented by Andrews and Nelson, its attorneys. The Bangor & Aroostook Railroad Company, upon the day of said hearing, filed by its attorney, J. F. Gould, an objection to the approval of the location prayed for, and requested that its objection be entered of record. This was done. The Bangor & Aroostook Railroad Company did not take part in any hearing upon said petition, but, upon presenting its above-named objection, withdrew from the hearing.

Upon said hearing, namely, in the city of Augusta on said 8th of January, 1915, it appearing that the petitioners had complied with all the preliminary requirements of law, and were entitled to be heard upon the petition for approval of partial location as provided for by law, the Commission thereupon proceeded to investigate the matter contained in said petition by examining the petition, plans, and profiles offered in evidence, and by the examination of witnesses. We examined also the original charter of the petitioners, together with amendment thereof above referred to, examining also chapter 122 of the Private and Special Laws of the state of Maine for the year 1891, and also chapter 362 of the Private and Special Laws of Maine for the year 1893, these last two being the ones referred to by the Bangor & Aroostook Railroad Company.

Now, after the hearing above referred to having been had, and after careful consideration of the above-named matters, and mature consideration, we find and order as follows:—

That the petitioners have complied with all the provisions of the laws of the state of Maine with reference to the matter of approval of the partial location asked for in its petition on

file in this matter, as shown by the petition, plans, and profiles, and the copy of the evidence on file, to all of which reference is herein made.

We find that the proposed road mentioned in said petition is at no point less than fifteen (15) miles from the line of the Bangor & Aroostook Railroad Company, and any branch thereof, except at and near the town of Houlton, where the petitioners' proposed railroad begins, and from which it issues on its way toward said Bancroft; and we further find in this same connection that the Eastern Maine Railroad is intending in good faith to build a railroad running from Houlton to Bancroft as above stated, and that the same, as proposed and described in said petition, plans, and profiles, does not run in the same general direction as the lines of the Bangor & Aroostook Railroad Company. It is therefore

Ordered and decreed, that that portion of the location of the Eastern Maine Railroad described in its petition on file, and shown by plans and profiles on file, be and the same are hereby approved.

Benjamin F. Cleaves, Wm. B. Skelton, Chas. W. Mullen,
Commissioners.

MISSOURI PUBLIC SERVICE COMMISSION.

IN RE VALUATION OF JOPLIN EXCHANGE OF THE HOME TELEPHONE COMPANY.

[Case No. 600.]

Valuation — Preliminary order — Rates.

A telephone company, upon joint agreement with a municipality as to the valuation of its exchange property for the establishment of a proposed rate schedule, was ordered by the Commission upon the filing and ratification of such agreement to submit to the Commission and to the municipality an inventory of such property, together with a detailed statement of its accounting records, and to subject its property and accounts to the inspection and examination of the Commission's engineers and accountants.

[January 26, 1915.]

JOINT agreement between a telephone company and the municipality as to valuation of the company's exchange property for the purpose of determining the reasonableness of a proposed rate schedule; ratified and approved and valuation order issued.

ORDER.

By the **Commission**: It appearing to the Commission that a joint agreement was entered into by and between the city of Joplin and the Home Telephone Company of Joplin on this date, and filed with the Commission, and among other provisions this Commission is requested to ascertain the value of the Joplin exchange of said Home Telephone Company of Joplin in order that the Commission may be enabled to determine the reasonableness of new rates by said company to become effective February 1, 1915.

Now, after due consideration, and for good cause shown, it is.

Ordered: 1. That, under and by virtue of the authority conferred upon the Commission by the Public Service Commission Law, notice is hereby given that the Commission proposes to ascertain the value of the Joplin exchange of the Home Telephone Company of Joplin, in order that the Commission may be enabled to determine the reasonableness of the rates proposed to be charged by said company, and to fix reasonable maximum rates to be hereafter charged by said company for telephone service; and that the Commission will hereafter hold a public hearing, after due notice of the time and place of such hearing has been given by the Commission to said company, at which time and place said company shall be entitled to be heard and to introduce evidence at said hearing.

Ordered: 2. That on or before May 1, 1915, the said Home Telephone Company of Joplin shall file with the Commission a full and complete inventory, following the classification for making such inventory furnished by the Commission, duly verified by the managing officer of said company, of all its property used in the service of the public in said Joplin telephone exchange, showing separately each kind and class and the quality and quantity of each kind and class, together with a statement of its

original book cost and an estimate of its reproduction value and present value.

Ordered: 3. That said Home Telephone Company of Joplin be and is hereby required to prepare and file with this Commission on or before May 1, 1915, a complete report of accounting records, showing clearly the following information of its said Joplin exchange as at the close of the past fiscal year:

- (a) General balance sheet.
- (b) Trial balance of general ledger before closing.
- (c) Analysis of the investment in plant in service in the Joplin exchange, showing separately the value of the toll plant and equipment.
- (d) Analysis of other investments showing clearly land, buildings, and equipment not devoted to operations.
- (e) Analysis of capital stock account showing for what consideration the capital stock was issued.
- (f) Analysis of surplus account showing the profits or losses of the company for each year and what disposition has been made of same.
- (g) A comparative profit and loss account for the past three years of the Joplin exchange, showing separately the revenues and expenses of the toll plant and equipment.
- (h) A statement showing the following information for the past three years:
 1. Number of subscribers receiving each class of service at beginning and end of each year.
 2. Average number of subscribers receiving each class of service at beginning and end of each year.
- (i) Statement of special rates, if any, for the past three years.

Ordered: 4. That the engineers and accountants of the Commission make a full and complete inspection and examination of all the accounts and property of said company belonging to said Joplin telephone exchange, and determine and report a true and correct inventory and appraisal of the property of said company now used for the public in said Joplin telephone ex-

change, and a report covering the financial history of the said company, its capitalization, and indebtedness, and also a true and correct analysis of all the income and expense accounts of the said company in connection with said Joplin telephone exchange.

Ordered: 5. That said Home Telephone Company of Joplin submit to the duly accredited engineers and accountants of the Commission all its books, papers, and accounts, and admit such engineers and accountants to each and every part of its property.

Ordered: 6. That said Home Telephone Company of Joplin shall on or before May 1, 1915, furnish to the city of Joplin a duplicate copy of the inventory described and required in § 2 of this order, and shall also furnish to said city of Joplin on or before said date a duplicate copy of the report of accounting records described and required in § 3 of this order.

Ordered: 7. That the Commission does hereby ratify and approve the joint agreement entered into by said city and said telephone company as hereinabove set forth, and the same is made a part of this order.

Ordered: 8. That this order shall take effect on this date, and that the secretary of the Commission shall forthwith serve on said Home Telephone Company of Joplin a certified copy of this order.

Ordered: 9. That said Home Telephone Company of Joplin be and hereby is required to notify the Commission, in the manner required by § 25 of the public service commission law, within five days after receipt of a certified copy of this order, whether the terms of this order are accepted and will be obeyed.

By the Commission.

Present: John M. Atkinson, Chairman, Edwin J. Bean, John Kennish, Howard B. Shaw, Frank A. Wightman, Commissioners.

OKLAHOMA CORPORATION COMMISSION.

IN RE ORDER TO ALL RAILROAD COMPANIES OPERATING IN OKLAHOMA.

[Order No. 891; Cause No. 2207.]

Rates — Switching — Discrimination.

The practice with reference to switching charges should be uniform, and the treatment of such charges should be the same in Oklahoma as it is in Texas, Kansas, and other surrounding states.

Railroads — Trap cars.

The trap car is justified by modern business practice and provides a way for a shipper to get his freight economically handled, so long as he can load it in sufficient quantities to be economically received by the railroads.

[January —, 1915.]

ADDITIONS and amendments to the Commissioner's order No. 440, with reference to switching charges proposed by the Commission on its own initiative, for the purpose of eliminating discrimination; adopted.

Appearances: W. V. Hardie, T. M., for Oklahoma Traffic Asso.; C. B. Heineman, A.T.M., A. W. McLaren and J. R. Baker for Morris & Company; A. C. Johnson for Sulzberger & Sons; P. H. Nolan for the Commission; Mr. Cottingham of Cottingham & Bledsee, J. C. Barnett, A.G.F.A., and W. K. Eiter, Supt. for the A. T. & S. F., G. C. & S. F., and K. C. S. Ry. Co's; C. O. Blake and Pat Portel, D.F.A. for the C. R. I. & P. Ry. Co.; C. L. Jackson and R. D. Williams, A.G.F.A., for the M. K. & T. Ry. Co., and R. A. Kleinschmidt and H. C. Conley, A.G.F.A., for the St. L. & S. F. R. R. Co.

OPINION AND ORDER.

By the Commission: This hearing came up on a proposed order issued by the Commission on its own initiative, namely, order No. 148, in words and figures, as follows, to wit:

"You and each of you are hereby notified that on the 8th day of December, 1914, at its office in Oklahoma City, the Corporation Commission will hear testimony relative to the necessity for making additions to the rules and regulations contained in

its order 440, and as a basis for such hearing the following is suggested:

"First. All shipments of less than carload freight aggregating 6,000 pounds or more to or from freight houses or train yards and warehouses will be handled free when the line performing such switching service receives a road haul.

"Second. The railroads and railways named herein will absorb connecting lines switching charges on less than carload shipments aggregating 6,000 pounds or more when to or from freight houses, freight yards, or warehouses on connecting lines on which the line performing such switching service receives a road haul.

"At said hearing, the Commission will take testimony relative to the above items, and will hear every objection which may be urged against the promulgation of an order covering the handling of such less than carload freight."

The foregoing proposal was due to an attempt at cancellation of rules and regulations which had been voluntarily put in effect by railway companies operating in Oklahoma on their own initiative. It appears from the testimony offered in this case that this initiative was with intent and purpose of satisfying the wants and needs of great mail order houses operating in the city of Chicago. The service when first initiated in Chicago was known as "trap car service." Such voluntary rules, for example, are contained in Supplement No. 15 to Frisco freight tariff No. 218-B. Page No. 2 of such supplement, item No. 19, reads as follows:

"Absorption and Switching on Less Than Carload Shipments.

"All shipments of less than carload freight aggregating 6,000 pounds or more to or from freight houses or train yards and warehouses on the St. L. & S. F. R. R. will be handled free when the St. L. & S. F. R. R. receives a road haul.

"St. L. & S. F. R. R. will absorb connecting lines switching charges on less than carload shipments aggregating 6,000 pounds or more when to or from freight houses, freight yards, or warehouses on connecting lines on which the St. L. & S. F. R. R. receives a road haul."

The following are quotations from other tariffs of other carriers in effect to the same rules:

From Santa Fe freight tariff 7641-G, ICC No. 6814, Section No. 2, page 9, in part as follows:

"Absorption of switching charges on L.C.L. shipments (see note) at all junction points between foreign lines and A. T. & S. F. Ry., in Kansas, Oklahoma, Colorado, and New Mexico; also Joplin, Mo., and Superior, Neb.

"Item No. 15. Car switched, containing L.C.L. shipments of freight aggregating 6,000 pounds or over, subject to L. C. L. rates received from or destined to any industry on connecting line within switching limits, the A. T. & S. F. Ry. will absorb connecting lines' switching charge.

"The 6,000 pounds or over, when outbound, must be from one consignor at one time.

"The 6,000 pounds or over, when inbound for delivery must be on one day from one consignee.

"Note.—The amount absorbed must not result in less total freight charge, after all absorptions have been made, of \$10 per car when moving under A. T. & S. F. Ry. Local rates, and \$20 per car when moving under joint through rates with A. T. & S. F. and foreign lines."

From M. K. & T. switching tariff No. 5562, Supplement No. 7, Item 19½:

"Oklahoma City, Oklahoma (file 125). Reissue. Effective June 28, 1911:

"All shipments of less than carload freight aggregating 6,000 pounds or over to or from freight houses or train yards and warehouses on the M. K. & T. Ry. will be handled free (when this company receives road haul). To or from freight houses or train yards and warehouses on connecting lines, the M. K. & T. Ry. Co. will absorb connecting line's switching where the freight charges amount to fifteen dollars (\$15) or more per car, or where freight charges are less than fifteen dollars per car, such portion of switching charges will be assumed as will leave same net revenue as would accrue after absorption of switching charges above authorized out of charge of fifteen dollars (\$15) per car."

The following is also quoted from Supplement 8 of the same tariff:

"Minimum Revenue to M. K. & T. Ry.

"Switching charges authorized in this tariff will be assumed only where the freight charges amount to fifteen dollars (\$15) or more per car; or where freight charges are less than fifteen dollars (\$15) per car, such portion of switching charges will be assumed as will leave same net revenue as would accrue after absorption of switching charges out of charge of fifteen dollars (\$15) per car."

Similar provisions for the absorption of switching charges are carried in Rock Island freight tariffs.

Following such voluntary issues by the railroad companies, the Texas Commission promulgated a similar rule in which they prescribed that the net transportation charge shall not in any case by such absorption be reduced below \$7.50 per car. Such rule is fully set forth in the 22d Annual Report of the Texas Railroad Commission for the year 1913, at page 254, and reads in words and figures as follows:

"Section 3. General Rules.

"1. Terminal switching service shall, in all cases, be furnished when demanded, at the charges provided in this tariff, and regardless of whether the freight transported, or to be transported, is of carload or less than carload quantity, provided the aggregate weight is not less than 6,000 pounds, and said charges shall, in all cases, be absorbed by the line or lines of railway performing the transportation haul on the freight switched, out of the freight charges accruing under the authorized freight rate applicable for the transportation of the commodity or commodities shipped between origin and destination stations; provided, that the net transportation charge shall not in any case, by such absorption, be reduced below \$7.50 per car. This minimum of \$7.50 per car will not be observed where the transportation haul is performed by the switching line. (Circular No. 4300, effective March 10, 1913.)"

In attempting to cancel the voluntary rules named above, other than the Texas promulgation, the A. T. & S. F. issued its supplement No. 4 to tariff No. 7641-G, to become effective January 1,

1915, showing switching charges on carloads and less than carload traffic from and to industries at points on lines named, except at points in Louisiana and Texas, Pekin, Illinois, Kansas City, Missouri, St. Joseph, Mo., Chicago, Illinois, and in addition to such exceptions named in such supplement to such tariff protected Kansas intrastate traffic only in § 1, in words and figures, as follows:

"(B) Following applies on Kansas intrastate traffic only:

"Cars switched containing L. C. L. shipments of freight aggregating 6,000 lbs. or over, subject to L. C. L. rates, when received or forwarded via the A. T. & S. F. Ry. will be handled free between A. T. & S. F. Ry. freight houses or train yards, and any industry on the A. T. & S. F. Ry. tracks or between connections with other lines and the A. T. & S. F. Ry. freight houses or train yards within switching limits."

The C. R. I. & P. Ry. issued its supplement No. 38, to its freight tariff 21432-B, Item No. 755-F, etc., at page 12 of such supplement, also canceling the uniform rule previously applied, effective as of January 15, 1913, and saved exceptions to and from industries in St. Louis, Missouri and East St. Louis, Missouri, St. Joseph, Missouri, and other important points on the Rock Island lines.

The M. K. & T. Railway Company attempted to cancel such voluntary rules named above, in its tariff No. 39,000-E, ICC No. A-4023, Item No. 180, reading as follows:

"Terminal Charges on Less than Carload Freight Handled by Car at Points in Missouri, Kansas, Oklahoma, and Illinois.

"(Applicable only at the following points: Ada, Okla., Alton, Ill., Coffeyville, Kan., Dewey, Okla., Durant, Okla., Ft. Scott, Kan., Joplin, Mo., McAlester, Okla., Mound Valley, Kan., Muskogee, Okla., Oklahoma City, Okla., Paola, Kan., and Tulsa, Okla.) (See exception.)

"On all shipments of less than carload freight (when M. K. & T. Ry. Co., receives road haul) handled by car (freight not subject to carload rate and minimum weight) to or from freight houses or train yards of the M. K. & T. Ry., and warehouses on the M. K. & T. Ry. or connecting lines, a charge of 4 cents per

100 pounds, minimum \$4 per car, will be made for terminal service, such charge to be collected at point or points where terminal service is performed.

"Exception.—Will not apply on intrastate traffic at the following points: Coffeyville, Ft. Scott, Mound Valley, and Paola, Kansas."

Such item was intended to become effective as of December 1, 1914.

The St. L. & S. F. Railroad Company attempted cancelation to its voluntary rules named above in supplement No. 9 to its freight tariff No. 1069-N, ICC No. 6691, intended to be made effective as of December 1, 1914. Item 121 in such supplement reads as follows:

"Switching Rates on Trap Cars:

"On all cars containing less than carload freight (freight not subject to carload rate and minimum), when originating at or destined to points outside of the switching districts, a charge of four (4) cents per 100 lbs., minimum \$4 per car, will be made for terminal service to or from industries located within the switching limits. Such charge to be collected at point or points where terminal service is performed. (See exception.)

"On shipments originating at or destined industries on connecting lines, the St. L. & S. F. R. R. will collect switching charges shown above and pay connecting lines their regular carload switching rates as provided in tariffs published and lawfully on file with the Interstate Commerce Commission and State Commissions, respectively.

"Exception.—The above will not apply on traffic to or from Memphis, Tenn., when originating at or destined to points east of the Illinois-Indiana state line or south of the Ohio river and east of the Mississippi river, not on trap cars switched at points east and south of Memphis, Tenn. For rates and absorptions see §§ Nos. 5 and 7."

All such attempted cancelations as outlined in the foregoing were suspended by the Interstate Commerce Commission.

It will be noted that such cancelations were rank discriminations against the state of Oklahoma. The numerous exceptions

saved in the supplements to tariffs named would work great injury to industries located within the state of Oklahoma. Such exceptions were made to save and protect industries located in surrounding states.

The testimony in this case given by Mr. C. B. Heineman, assistant traffic manager for Morris & Company, shows very plainly that the attempted cancelation was not in any wise free from the vice of discrimination, and suggested that terminal facilities were being furnished by the railroads to large shippers in other states by virtue of such attempted cancelation, which amount to special concessions, and permit other states to be beneficiaries as against traffic in Oklahoma.

Mr. Heineman's testimony showed that in the trap-car arrangement there were great benefits to be derived to the carriers in addition to relieving their terminal facilities and obviating the necessity of their expending an enormous amount of money in an outlay or expenditures necessary to provide suitable and adequate terminal facilities. He further stated that he had inspected the freight houses in Oklahoma City, and knew, of his own personal knowledge, that such warehouses were not of sufficient capacity to handle this pedler car business in addition to their present less than carload traffic. He further stated that on pedler cars the packing-house industries in Oklahoma were meeting strong competition from Fort Worth, Texas, on the south, and Wichita, Kansas, on the north; and that if such attempted cancelations were permitted to be finally effective, it would mean that business industries in the state of Oklahoma would be shut out of Kansas, owing to the saving clause in such attempting cancelations for the benefit of the state of Kansas and for the benefit of the state of Texas.

It appears from the testimony offered in the case that the railroads are willing to protect Wichita, Fort Worth, and industries at Kansas City, St. Joseph, St. Louis, Joplin, Missouri, and other important jobbing centers to the exclusion of Oklahoma, all of which is fundamentally wrong in principle and in operation.

It is right and proper that the practice should be uniform and that the treatment should be the same in Oklahoma as it is in

Texas, Kansas, and other surrounding states; that is, if this rule and regulation is good in one place it should be equally as good in the other.

State ex rel. Kohler v. Cincinnati, N. O. & T. P. R. Co. 47 Ohio St. 130, 138, 7 L.R.A. 319, 23 N. E. 928. And see Ayres v. Chicago & N. W. R. Co. 71 Wis. 372, 5 Am. St. Rep. 225, 37 N. W. 432; Doty v. Strong, 1 Pinney (Wis.) 313, 40 Am. Dec. 773; Atchison, T. & S. F. R. Co. v. Denver & N. O. R. Co. 110 U. S. 667, 28 L. ed. 291, 4 Sup. Ct. Rep. 185; Walker v. Jackson, 10 Mees. & W. 161, 12 L. J. Exch. N. S. 165.

It is further disclosed in the testimony that the shippers could not reasonably object to the \$4 minimum for service if everybody in the United States had to pay \$4, that is to say, if the new rules were made uniform and applied to all localities. No doubt if the rule were made uniform it would greatly increase the revenues of the railways operating in the United States, if the \$4 terminal charge were made on all L. C. L. shipments. If the rule were made uniform it would blot out discrimination, but it appears from the reading of the supplements to tariffs and tariffs, which were suspended, that the state of Oklahoma was to be the target, and it might appear from the evidence that Oklahoma was to be purposely discriminated against.

The Commission finds that there is no justification for discrimination against Oklahoma; that the trap car is a modern way of doing business, and after business has been established, owing to the voluntary rule of the railroads, that it provides a way for a shipper to get his freight economically handled so long as the shipper can load it in sufficient quantities to be economically received by the railroads.

The testimony of experts in this case heard lead the Commission to believe, especially in pedler car traffic, as handled and loaded by packing industries, that the expense is less than if such traffic were handled through the inadequate terminals offered by railroad companies operating in the large shipping centers in the state of Oklahoma.

It is therefore ordered that the following additions and amendments be made to this Commission's order No. 440:

Add to said order, the following items:

Item No. 12. Cars containing shipments of less than carload freight aggregating 6,000 lbs., or more, shall be handled to or from the freight houses or train yards and industries or warehouses without charge, when the line performing such switching service receives a road haul.

Item No. 13. Cars containing shipments of less than carload freight aggregating 6,000 lbs., or more, shall be handled to or from freight houses or train yards and industries or warehouses located on connecting lines, and upon such cars the line or lines performing the road haul shall absorb connecting line and intermediate switching necessary to or from such industry or warehouse.

Item No. 14. Inbound cars, handled under items 12 and 13 must be for a consignee, at one point of delivery, in one day.

Item No. 15. Outbound shipments handled under items 12 and 13 must be from one consignor, in one car, on one day.

Item No. 16. The provisions of items 12 and 13 shall apply in cases where the freight loaded is less than 6,000 lbs., but in such cases the deficit in weight shall be charged for at the less than carload rate to or from, as the case may be, the lowest rated point to or from which a shipment is contained in the car, and upon the lowest rated article in the car.

Item No. 17. Provided that, upon shipments handled under items 12 and 13, such portion of the switching charges provided in item No. 1 of order No. 440, may be added to the line freight charges as will result in protection of a net revenue of \$10 per car to the line or lines performing the road haul; but in no case shall the total charges exceed the sum of the line freight charges plus the switching charges provided for in items 1, 3, and 4 of order No. 440.

This order to take effect on and after the 14th day of February, 1915.

Corporation Commission. J. E. Love, Chairman, A. P. Watson, Commissioner, Geo. A. Henshaw, Commissioner.

P. U. R.—15.

OKLAHOMA CORPORATION COMMISSION.

CITY OF EL RENO

v.

EL RENO GAS & ELECTRIC COMPANY.

[Order No. 890; Cause No. 1943.]

Rates — Reasonableness.

The rates of a gas company will not be reduced as exorbitant when it appears that the net earnings are insufficient to pay interest and provide a reasonable depreciation allowance on a plant value fixed by the Commission, without investigation, at two thirds of the reproduction value reported to the Commission by the gas company.

Depreciation — Allowance — Sufficiency.

The annual depreciation allowance for a gas plant should be sufficient to replace the main parts of the property when the same have deteriorated from causes other than operation, such as the mineral character of the soil in which mains are laid, and the character of the water used in boilers.

Return — Minimum rate.

In an investigation of gas rates, an allowance of the minimum rate of 6 per cent interest annually upon the investment for the purposes of computation is not to be considered a determination by the Commission of the proper rate.

Depreciation — Minimum rate.

In an investigation of gas rates, an allowance of the minimum rate of 4 per cent annually for depreciation for purposes of computation is not to be considered a determination by the Commission of the proper rate.

Rates — Reasonableness.

A gas company should be permitted to charge any reasonable rate that will produce the greatest net revenue when such company is not making sufficient revenue to provide for depreciation and interest on the investment.

[January 26, 1915.]

PETITION upon agreed statement of facts for reduction of gas rates; dismissed without prejudice.

Appearances: P. P. Duffy for complainant; Paul Reiss for defendant.

OPINION AND ORDER.

By the **Commission**: The complaint in this case was filed by order of the board of commissioners of the city of El Reno,

which board acted upon petition signed by twenty citizens. The petition alleges that the rates for artificial gas in El Reno is \$1.50 per thousand cubic feet; that the rate is exorbitant and more than is charged for a like commodity in any of the cities in Oklahoma; that at Enid, the rate is \$1.25 per thousand less a discount of 25 per cent if paid before the 10th of the month; and asked that the Commission establish reasonable rates.

The case was submitted upon the following agreed statement of facts:

It is agreed that this case may be taken as submitted subject to the following agreement:

First. It is agreed that the rates in Enid for gas are as per schedule of rates on file with the Corporation Commission not in excess of \$1.25 per M cu. ft.

Second. That the rates for gas in McAlester are as per the schedule of rates on file with the Commission not in excess of \$1.25 per 1,000 cu. ft.

Third. That the rate for gas in El Reno is as per the schedule of rates on file with the Commission not in excess of \$1.50 per 1,000 cu. ft.

Fourth. That the El Reno Gas & Electric Company will, within ten days from the date thereof, file with the Commission a verified statement of the following:

- (a) Gross receipts from the sale of gas in El Reno.
- (b) Operating expenses as to the gas business in El Reno.
- (c) Value of property devoted to the gas business in El Reno.

Such statement to be subject to verification by the Commission if in its opinion any further verification is necessary.

It is also agreed that the gas plant in Enid is known as a "water gas" set and the one in El Reno as a "coal gas" set.

(Signed) Paul Reiss for the El Reno Gas & Elec. Co.
P. P. Duffy, Mayor, city of El Reno, Okla.

As per the above agreed statement, the defendant filed its gross receipts, its operating expenses, and the report shows the book value of the property. The following is a complete analysis of the gross earnings and expenses for the years 1910 to 1914 inclusive, same being a period of five years:

	1910	1911	1912	1913	1914
Revenues—Gas Department -----	\$20,601.56	\$23,847.33	\$26,572.44	\$25,166.00	\$23,589.46
Gas Plant Wages -----	2,848.36	3,671.41	3,643.34	3,673.78	3,615.80
Fuel Used -----	7,237.10	10,708.89	10,626.58	14,281.67	13,099.96
Water Used -----		43.33	111.79	225.10	233.09
Oil and Waste Used -----	97.94	104.80	39.21	18.70	33.66
Purifying Material Used -----		79.35	55.00	16.50	79.03
Miscellaneous Manufacturing Expenses -----	19.36	22.43	96.07	95.17	119.52
Tar and Coke Produced -----	(2,309.36)	(3,050.57)	(4,482.28)	(8,367.97)	(7,069.25)
Maintenance, Land and Buildings -----		1.70	64.36	35.85	9.33
Maintenance, Gas Plant -----	292.80	712.38	778.71	967.21	710.13
Gas Furnished Other Depts. (Red) -----				(5.55)	(21.03)
Total -----	8,186.20	12,324.32	10,932.78	10,940.46	10,810.24
Reading Meters -----	129.79	168.34	216.37	197.44	156.87
Distribution, Supplies and Expenses -----				5.44	3.15
Mains -----	35.14	12.59	37.34	82.51	251.27
Services -----	20.85	94.03	90.12	62.39	120.18
Meters -----	14.87	79.03	205.10	249.51	251.68
Tools and Instruments -----	7.76	69.56	88.67	58.34	57.53
Gas Arc Lamps -----	166.65	122.75	56.59	81.98	47.19
Gas Regulators -----	50.80				
Superintending Lines -----					
Cost of Meter Changes -----	43.27	177.65	282.69	261.64	344.21
Free Ranges, Watchman -----	168.95	311.12	750.50	*607.80	
Customers Repairs and Renewals -----		106.79	13.16	25.63	41.41
Troublemens -----			195.95	358.79	408.93
Total -----	633.08	1,141.86	1,936.49	1,991.77	1,682.47
Bad Debts -----			118.23	122.61	116.28
Maintenance of Office Building -----			18.05	42.93	12.59
Salaries General Officers -----	750.00	522.37	500.00	708.33	833.32
Salaries of Clerks -----	1,203.75	1,515.72	1,484.18	1,480.35	1,410.58
Printing and Stationery -----	269.65	299.30	353.80	395.52	243.81
Telephone and Telegraph -----	108.24	91.88	118.50	88.82	92.47
Advertising -----	310.49	441.61	674.25	758.50	144.66
Miscellaneous -----	206.44	272.65	388.25	433.21	637.44
Legal -----	207.54	265.32	402.49	526.06	134.58
Office Rent -----	339.99	315.00	280.00	295.00	201.66
Insurance -----	371.19	529.08	636.78	577.69	383.79
Horse and Wagon -----	59.27	196.18	246.10	229.48	24.95
Store Room -----	107.13	98.42	144.69	95.29	8.68
Injuries -----	17.00	15.00	52.67	11.40	
Taxes -----	509.76	950.60	868.86	2,209.11	2,380.53
Total -----	13,234.71	18,979.26	19,156.17	20,906.53	19,218.05
Net Income -----	7,316.85	4,868.07	7,416.27	4,259.47	4,371.41

This statement shows the net operating revenue for the year 1910 of \$7,316.85, after expenses and taxes are deducted, and for the year 1914, the net operating revenue is \$1,371.41. This amount is the net revenue without deducting anything for depreciation or interest on investment. The gas company, under the agreement, filed a statement with the Commission that the reproduction value of the gas plant at El Reno was \$156,355. The Commission did not investigate this report to ascertain its correctness, but assuming that the value of the plant is only two thirds of what it is reported to the Commission, or \$100,000, the net earnings appear to be insufficient to pay for the interest on the investment and to allow for reasonable depreciation of the plant. Depreciation of a gas plant means a sufficient amount set aside each year to replace the main parts of the property when the same shall have deteriorated from causes other than operation. That is, gas mains under ground will probably last from fifteen to twenty-five years, depending upon the character of the soil in which they are placed.

In the Supreme Court of the United States in the Knoxville Water Case, 212 U. S. 1, 53 L. ed. 371, 29 Sup. Ct. Rep. 148, Mr. Justice Moody said:

"Before coming to the question of profit at all, the company is entitled to earn a sufficient sum annually to provide not only for current repairs, but for making good the depreciation and replacing the parts of the property when they come to the end of their life. . . . It is not only the right of the company to make such a provision, but it is its duty to its bond and stockholders, and, in the case of a public-service corporation at least, its plain duty to the public."

The proper rate of depreciation on gas pipes and other portions of the machinery depends entirely upon the location of the same with reference to the action of the mineral substance with which it comes in contact under ground, and the duration of the boilers and other apparatus depends more or less on the character of water used therein. In the western part of the state gyp water is used in boilers, and they deteriorate very rapidly. A depreciation less than 4 per cent has not been allowed in any case. This assumes that all parts of the plant must be renewed within twenty-

five years. This, of course, does not include the temporary renewals or repairs from year to year.

Assuming the value of the plant to be \$100,000, there should be set aside each year the sum of \$4,000 for depreciation; interest on the investment at not less than 6 per cent, which would be \$6,000 per year. It should not be inferred from this that the Commission is passing upon the proper rate of depreciation for the El Reno plant, or the proper interest which it should be entitled to receive, but is using the minimum allowed in any case.

It is contended that the rate for natural gas in Enid is \$1 per thousand; also in McAlester \$1 per thousand. McAlester and Enid have a minimum charge of \$1 per month regardless of the amount of gas used, while in El Reno the minimum charge is 25 cents. That is, 25 cents for the first 100 cubic feet or less. The average number of subscribers in the El Reno plant last year was 952; the total income \$23,589; this produces an average monthly gas bill to each consumer of \$2.06. At Enid, with the minimum charge of \$1 per month and 1,525 consumers, total income of \$38,234, the average monthly gas bill to each consumer is \$2.09, or 3 cents more than at El Reno. At McAlester, with \$1 minimum, and 649 consumers, total revenue of \$27,131, the average per consumer is \$3.49 per month.

This analysis seems to indicate that the minimum charge of \$1 per month increases the cost somewhat. While the cost per subscriber at Enid and McAlester is greater than at El Reno, this may be explained by the fact that the consumers at those places may in fact use more gas than at El Reno, and it may partly be due to the minimum charge.

It is claimed that the gas at Enid is generated by a different process, known as "water gas," produced largely from crude oil, while at El Reno and at McAlester the gas is produced from coal.

Regardless of whether the rates produce a sufficient revenue to pay an income on investment, they may be unreasonable. When a plant is not making a sufficient revenue to pay depreciation and interest on the investment, it should be permitted to charge any reasonable rate that will produce the greatest net revenue. We have some doubt as to whether the rate in El Reno

does in fact produce more net revenue than a lower rate would produce. If the rate were only two thirds of what it now is, the consumers would consume more gas and there would be more gas consumers. If an increased number of consumers and the distributing of an increased amount of gas would not require the facilities to be extended, it would doubtless have the result of producing a greater net revenue. However, this is problematical so far as the record in this case is concerned, and is only mentioned here as a suggestion.

From the facts introduced in this case, by agreement, upon which the Commission must decide the same, we are clearly of the opinion that the net revenues are not greater than are necessary to care for proper depreciation and interest on the investment.

The complaint will be dismissed without prejudice, and upon application of the complainant, the case will be reopened and further investigated.

Corporation Commission. J. E. Love, Chairman; A. P. Watson, Geo. A. Henshon, Commissioners.

UNITED STATES SUPREME COURT.

SOUTH COVINGTON & CINCINNATI STREET RAILWAY
COMPANY, Plaintiff in Error

v.

CITY OF COVINGTON, JOHN J. CRAIG, MAYOR, AND
HENRY B. SCHULER, CHIEF OF POLICE.

[No. 28.]

Commerce — What is interstate commerce — Transportation by street railway.

The traffic carried on by a Kentucky street railway corporation in connection with an Ohio corporation operating on the Ohio side of the Ohio river, in transporting passengers upon continuous and connecting tracks and across an interstate bridge between points in Covington, Kentucky, and Cincinnati, Ohio, by means of continuous trips and a single fare, and under practically the same management,—is interstate commerce.

*Commerce — State regulation — Street railways — Congressional in-
action.*

The absence of Federal regulation does not justify the city of Covington, Kentucky, in regulating the interstate business of a street railway company principally engaged in transporting passengers from that city to Cincinnati, Ohio, by restricting the number of passengers which the company may admit to its cars to not more than one third in excess of the seating capacity, except on certain holidays, and by requiring the company to operate sufficient cars reasonably to accommodate the public within the limits of such restriction, where compliance with such regulations will require about one half more than the present number of cars operated by the company, and more cars than can be operated in Cincinnati within the present franchise rights and privileges held by the company or controlled by it in that city.

*Commerce — State regulation — Street railways — Congressional in-
action.*

Municipal regulation of a street railway company, principally engaged in interstate commerce, with reference to passengers riding on car platforms unless the same are provided with suitable rails or barriers, and with reference to the cleanliness, ventilation, and fumigation of the cars, does not infringe upon the Federal authority over such commerce,—at least, until such Federal authority is exerted.

*Commerce — State regulation — Street railways — Temperature of
cars.*

A municipal ordinance providing that the temperature of the cars of a street railway company which is principally engaged in interstate commerce shall never be permitted to be below 50 degrees Fahrenheit must be deemed to be invalid as unreasonable, where the undisputed testimony shows that it is impossible in the operation of the cars to keep them uniformly up to this temperature, owing to the opening and closing of doors, and other interferences that make it impracticable.

[Argued October 30, 1914. Decided January 5, 1915.]

IN ERROR to the Court of Appeals of the State of Kentucky to review a decree which affirmed a decree of the Circuit Court of Kenton County, in that state, dismissing a suit to enjoin the enforcement of municipal regulations respecting the operation of street cars. Reversed in part and remanded for further proceedings.

See same case below, 146 Ky. 592, 143 S. W. 28.

The facts are stated in the opinion.

Appearances: Messrs. Alfred C. Cassatt, Frank W. Cottle, and Richard P. Ernst for plaintiff in error; Mr. Frederick W. Schmitz for defendants in error.

Mr. Justice Day delivered the opinion of the court:

This case originated in a petition filed by the South Covington & Cincinnati Street Railway Company, a corporation of the state of Kentucky, having for its purpose to enjoin the city of Covington from enforcing a certain ordinance regulating the operation of the street cars of the company. The features of the ordinance essential to be considered here are found in its first seven sections, which are:

"Section 1. That it shall be unlawful for any person, corporation, or company owning or operating street cars for the carriage of passengers for hire in or through or over the public streets of the city of Covington, to permit more than one-third greater in number of passengers to ride or to be transported within such cars over and above the number for which seats are provided in the same, provided that this section shall not apply to or be enforced on the days celebrated as Fourth of July, Decoration Day, or Labor Day.

"Section 2. No such person, company, or corporation shall suffer or permit any passenger or person to ride upon the rear platform of any such car unless the same be provided with a suitable rail or barrier so arranged as to provide an open space reasonably sufficient for egress and ingress of passengers to and from such car, and no one shall be permitted to stand in such place so provided for such ingress and egress, but the same shall at all times be kept clear, free, and open. Any person refusing to vacate such open space provided for egress and ingress upon request of the conductor in charge of said car shall be guilty of a misdemeanor, and be subject to a fine of not less than \$5 nor more than \$50, recoverable in the police court of said city.

"Section 3. No such person, company, or corporation shall suffer or permit any person or passenger to ride upon the front platform of any such car unless a rail or barrier be provided, separating the motorman from the balance of said front platform, said space allowed for the motorman shall in all cases be sufficient to permit him to properly and conveniently operate the mechanism controlling said car without interfering or crowding from the other person upon said platform, if any, and no person

or passengers shall be ever permitted to stand by or remain within the enclosure thus provided for the motorman.

"Section 4. It shall be the duty of every such person, company, or corporation to at all times keep its car thoroughly cleaned and ventilated, and shall at least once a week fumigate the inside of said cars with efficient disinfectant, and the board of health of the city of Covington shall have power and authority to prescribe reasonable rules providing for the cleanliness, ventilation, and fumigation of such cars, and all such persons, companies, or corporations shall comply with such reasonable rules.

"Section 5. The temperature of such cars shall never be permitted to be below 50 degrees Fahrenheit.

"Section 6. It is hereby made the duty of every company, person, or corporation operating street cars and the street car lines within the corporate limits of the city of Covington, to run and operate cars in sufficient numbers at all times to reasonably accommodate the public within the limits of this ordinance as to the number of passengers permitted to be carried, and the general council of the city of Covington may, by resolution, at any time direct that the number of cars operated upon any line or route be increased to a sufficient number to so accommodate the public, if there is failure in that respect. Any such person, company, or corporation failing or refusing to run or operate sufficient cars as by this section provided shall be subject to the penalties provided by § 2 hereof.

"Section 7. Any person, company, or corporation violating either of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than fifty nor more than one hundred dollars for each offense, recoverable in the police court of the city of Covington, and each car operated in violation of this ordinance shall constitute a separate offense for each day it is so operated, and it is hereby made the duty of all police officers of such city, and others exercising police power, to see to the enforcement of this ordinance, and to arrest or to cause the arrest of all persons guilty of its infraction. And the chief of police is hereby directed to assign at least one police officer to the special enforcement of this ordinance. It shall be the duty of such officer to examine and observe street cars in

operation, and to make arrests and cause proper prosecutions to be started against offenders violating this ordinance."

The circuit court of Kenton county, Kentucky, refused the injunction and dismissed the petition, and this decree was affirmed by the court of appeals of Kentucky (146 Ky. 592, 143 S. W. 28), and the case is brought here.

It was set up in the petition and amended petition that the ordinance is an unlawful interference with interstate commerce, in violation of the Federal Constitution, article I., § 8, giving exclusive authority to Congress over that subject; that it deprives plaintiff of its property without due process of law, in violation of the 14th Amendment; and that it impairs the obligation of a certain contract previously entered into between the plaintiff and the city of Covington, in violation of article I., § 10, of the Constitution.

The testimony shows that the plaintiff is a Kentucky corporation, and its principal occupation is the carrying of passengers in connection with an Ohio corporation which operates on the other side of the Ohio river, upon continuous and connecting tracks, and across a bridge from Covington to Cincinnati, which this court has held to be an instrument of interstate commerce (*Covington & C. Bridge Co. v. Kentucky*, 154 U. S. 204, 38 L. ed. 962, 4 Inters. Com. Rep. 649, 14 Sup. Ct. Rep. 1087). This traffic is conducted by means of continuous trips and for a single fare, between points on the lines of the railway in Covington and Fourth street or Fountain square in the city of Cincinnati or from any point between Fourth street or Fountain square in the city of Cincinnati to points in the city of Covington. Practically every car is thus engaged in going to or coming from Cincinnati, and from 75 to 80 per cent of the passengers carried in the city of Covington are being transported from Covington to Cincinnati, or from Cincinnati to Covington, or farther in Kentucky. The cars operate without change of motormen or conductors, and under the direction of the same officers.

This court has repeatedly held that whether given commerce is of an interstate character or not is to be determined by what is actually done, and if the transportation is really and in fact between states, the mere arrangements of billing or plurality of

carriers do not enter into the conclusion. Here is an uninterrupted transportation of passengers between states, on the same cars, and under practically the same management, and for a single fare. We have no doubt that this course of business constitutes interstate commerce. *Texas & N. O. R. Co. v. Sabine Tram Co.* 227 U. S. 111, 57 L. ed. 442, 33 Sup. Ct. Rep. 229; *St. Louis, S. F. & T. R. Co. v. Seale*, 229 U. S. 156, 57 L. ed. 1129, 33 Sup. Ct. Rep. 651, Ann. Cas. 1914C, 156; *Railroad Commission v. Worthington*, 225 U. S. 101, 56 L. ed. 1004, 32 Sup. Ct. Rep. 653; *Omaha & C. B. Street R. Co. v. Interstate Commerce Commission*, 230 U. S. 324, 336, 57 L. ed. 1501, 1506, 46 L.R.A. (N.S.) 385, 33 Sup. Ct. Rep. 890. A contrary conclusion was reached in this case by the Kentucky court of appeals upon the authority of *Missouri P. R. Co. v. Kansas*, 216 U. S. 262, 54 L. ed. 472, 30 Sup. Ct. Rep. 330, but that case concerns an order under authority of the state of Kansas, requiring the running of a passenger train wholly within the state. It was pointed out in the course of the opinion that the order did not deal with an interstate train, or put a burden upon such train, but simply required the operation within the state of a local train, the duty of operating such train arising from the charter obligation of the company.

Reaching the conclusion that the traffic here regulated is of an interstate character, and therefore within the control of the Federal Congress, the further question is presented: Does the case come within that class wherein the state may regulate the matter legislated upon until Congress has acted by virtue of the supreme authority given it by virtue of the commerce clause of the Constitution? In numerous instances this court has sustained local enactments, passed in the exercise of the police power of the state, in the interest of the public health and safety, notwithstanding the regulation may incidentally or indirectly affect interstate commerce. The subject was given much consideration in the *Minnesota Rate Cases* (*Simpson v. Shepard*) 230 U. S. 352, 57 L. ed. 1511, 48 L.R.A. (N.S.) 1151, 33 Sup. Ct. Rep. 729, and the previous cases dealing with this subject are therein collected and reviewed. In the light of these cases, and upon principle, the conclusion is reached that it is competent for the

state to provide for local improvements or facilities, or to adopt reasonable measures in the interest of the health, safety, and welfare of the people, notwithstanding such regulations might incidentally and indirectly involve interstate commerce. Summing up the matter, it is there stated:

"Our system of government is a practical adjustment by which the national authority, as conferred by the Constitution, is maintained in its full scope without unnecessary loss of local efficiency. Where the subject is peculiarly one of local concern, and from its nature belongs to the class with which the state appropriately deals in making reasonable provision for local needs, it cannot be regarded as left to the unrestrained will of individuals because Congress has not acted, although it may have such a relation to interstate commerce as to be within the reach of the Federal power. In such case, Congress must be the judge of the necessity of Federal action. Its paramount authority always enables it to intervene at its discretion for the complete and effective government of that which has been committed to its care, and for this purpose and to this extent, in response to a conviction of national need, to displace local laws by substituting laws of its own. The successful working of our constitutional system has thus been made possible."

In the light of the principles settled and declared, the various provisions of this ordinance must be examined. That embodied in §§ 1 and 6 makes it unlawful for the company to permit more than one third greater in number of the passengers to ride or be transported within its cars over and above a number for which seats are provided therein, except this provision shall not apply or be enforced on the Fourth of July, Decoration Day, or Labor Day, and by § 6 it is made the duty of the company operating the cars within the city of Covington to run and operate the same in sufficient numbers at all times to reasonably accommodate the public, within the limits of the ordinance as to the number of passengers permitted to be carried, and the council is authorized to direct the number of cars to be increased sufficiently to accommodate the public if there is a failure in this respect. To comply with these regulations, the testimony shows, would require about one half more than the present number of cars

operated by the company, and more cars than can be operated in Cincinnati within the present franchise rights and privileges held by the company, or controlled by it, in that city. Whether, in view of this situation, this regulation would be so unreasonable as to be void, we need not now inquire. These facts, together with the other details of operation of the cars of this company, are to be taken into view in determining the nature of the regulation here attempted, and whether it so directly burdens interstate commerce as to be beyond the power of the state. We think the necessary effect of these regulations is not only to determine the manner of carrying passengers in Covington and the number of cars that are to be run in connection with the business there, but necessarily directs the number of cars to be run in Cincinnati, and the manner of loading them when there, where the traffic is much impeded and other lines of street railway and many hindrances have to be taken into consideration in regulating the traffic. If Covington can regulate these matters, certainly Cincinnati can, and interstate business might be impeded by conflicting and varying regulations in this respect, with which it might be impossible to comply. On one side of the river one set of regulations might be enforced, and on the other side quite a different set, and both seeking to control a practically continuous movement of cars. As was said in *Hall v. DeCuir*, 95 U. S. 485, 489, 24 L. ed. 547, 548, "commerce cannot flourish in the midst of such embarrassments."

We need not stop to consider whether Congress has undertaken to regulate such interstate transportation as this, for it is clearly within its power to do so, and absence of Federal regulation does not give the power to the state to make rules which so necessarily control the conduct of interstate commerce as do those just considered.

There are other parts of the ordinance which we are of opinion are within the authority of the state, and proper subject-matter for its regulation; at least, until the Federal authority is exerted. These are the provisions with reference to passengers riding on the rear platform unless the same be provided with a suitable rail or barrier, etc., and as to persons riding upon the front platform unless a rail or barrier be provided, separating the motorman

from the balance of the front platform, as well as those provisions with reference to the requirement to keep the cars clean and ventilated and fumigated. We think these regulations come within that class in which this court has sustained the right of the local authorities to safeguard the traveling public, and to promote their comfort and convenience, only incidentally affecting the interstate business, and not subjecting the same to unreasonable demands. *New York, N. H. & H. R. Co. v. New York*, 165 U. S. 628, 41 L. ed. 853, 17 Sup. Ct. Rep. 418; *Lake Shore & M. S. R. Co. v. Ohio*, 173 U. S. 285, 43 L. ed. 702, 19 Sup. Ct. Rep. 465; *Atlantic Coast Line R. Co. v. Georgia*, 234 U. S. 280, 291, 292, 58 L. ed. 1312, 1317, 1318, 34 Sup. Ct. Rep. 829. As to the regulation affecting the temperature of the cars, and providing that they shall never be permitted to be below 50° Fahrenheit, the undisputed testimony shows that it is impossible in the operation of the cars to keep them uniformly up to this temperature, owing to the opening and closing of doors, and other interferences that make it impracticable. We therefore think, upon this showing, this feature of the ordinance is unreasonable and cannot be sustained.

Our conclusion is that the court of appeals of Kentucky erred in refusing the injunction as against the provisions of the ordinance regulating the number of passengers to be carried in a car and the number of cars to be provided, and the requirement as to heating, in view of the testimony as heretofore stated. In these respects its decision should be reversed. We think the other provisions of the ordinance separable, and concerning them the plaintiff in error was not entitled to an injunction in the state court.

Judgment is reversed in part, and the case remanded to the state court for further proceedings not inconsistent with this opinion.

Reversed.

Note.—The foregoing decision, with the decisions of the Wisconsin Railroad Commission in *Nolan v. Chicago & N. W. R. Co.* infra, 240, and *Hughson v. Duluth, S. S. & A. R. Co.* infra, 244, present the question of state regulation of interstate carrier service. The cases lay down the principles heretofore reasonably well estab-

lished, that it is competent for a state to provide by statute or through a regulating commission for local improvements or facilities, or for the adoption of reasonable measures in the interest of the health, safety, and welfare of the people, notwithstanding the fact that such regulations may incidentally and indirectly involve interstate commerce. The Wisconsin Commission announces its jurisdiction over interstate trains with respect to adequacy of train service, so long as this jurisdiction is not so exercised as to be an unwarranted interference with interstate commerce.

For the discussion of analogous questions, see the following: State regulation of railroad rolling stock as interference with interstate commerce, 32 L.R.A.(N.S.) 20; State regulations requiring carriers to furnish cars to shipper as interference with interstate commerce, 42 L.R.A.(N.S.) 984; Right to limit speed or to require the stopping of interstate trains, 14 L.R.A.(N.S.) 293; Does transportation between points in same state, over route part of which is in another state, constitute interstate commerce, 28 L.R.A.(N.S.) 985; Federal or state jurisdiction to make regulations as to infected animals, 43 L.R.A.(N.S.) 1066; Applicability of commerce or statutes thereunder to street railways or to interurban roads, 46 L.R.A.(N.S.) 385; Power to compel stoppage of interstate trains at stations, 44 L.R.A.(N.S.) 478.

WISCONSIN RAILROAD COMMISSION.

M. J. NOLAN ET AL.

v.

CHICAGO & NORTHWESTERN RAILWAY COMPANY,
GREEN BAY & WESTERN RAILROAD COMPANY.

Railroads — Service — Train connections.

Connecting railroads were ordered to operate two trains which were scheduled at an important junction point only twenty-six minutes apart, so as to make connection, where it appeared that such an arrangement would not disrupt more important connections of either train, or create unfavorable operating conditions; and, further, that adequate service required such connection to be made.

Railroads — Service — Seasonable time to require shorter schedule.

A change of railroad schedule requiring shorter running time was not ordered effective until April 1st, on account of the difficulty of operating trains on schedule time during severe winter weather.

Railroads — Jurisdiction — Intrastate service of interstate trains.

The Commission will not hesitate to require an interstate train to

stop or to make proper connection within the state when such changes are necessary for adequate intrastate service.

[January 18, 1915.]

PETITION to compel two connecting railroads to make train connection; connection ordered.

Appearances: William N. Martin for petitioners; C. A. Vilas for the Chicago & Northwestern Railway Company; J. H. McGillan for the Green Bay & Western Railroad Company.

By the Commission: The petition herein, which is signed by a large number of residents of Manawa, Scandinavia, Iola, Ogdensburg, and Royalton, alleges in substance that train No. 105 north bound on the line of the Chicago & Northwestern Railway Company is scheduled to arrive at New London junction at 7:34 p. m.; that train No. 3 west bound on the line of the Green Bay & Western Railroad Company is scheduled to arrive at New London junction at 6:40 p. m.; that these trains do not connect at the present time, but that prior to 1911 connection was made; and that the lack of such connection renders the service of the respondents unreasonable and unjustly discriminatory. The Commission is therefore asked to take such action as it deems proper in the premises.

The Chicago & Northwestern Railway Company, in its separate answer, alleges that the present schedule of the trains in question has been in effect since May 28, 1911, and that the running time of the trains cannot be shortened nor the schedule changed without breaking connections with the Chicago train at Milwaukee for Sheboygan, Manitowoc, Wausau, and Antigo, and also breaking connections from Fond du Lac, Oshkosh, and local points through to Rhinelander. It therefore asks that the complaint be dismissed.

No formal answer was filed by the Green Bay & Western Railroad Company.

A hearing was held on June 3, 1914, at New London. William N. Martin appeared for the petitioners, C. A. Vilas for the Chicago & Northwestern Railway Company, and J. H. McGillan for the Green Bay & Western Railroad Company.

The testimony shows that the Chicago & Northwestern Rail-
P. U. R.—16.

way Company's train which was formerly known as train No. 105 is now designated as train No. 153, and is scheduled to arrive at New London junction at 6:59 P. M. north bound. The Green Bay & Western Railroad Company's train No. 3 is now scheduled to leave New London junction at 6:33 P. M., no connection being made with train No. 153.

Much testimony was introduced with reference to the need of the connection prayed for. It was shown that patrons of the Green Bay & Western Railroad Company at stations west of New London junction are unable to reach their trading center at Appleton until about 11 A. M. Owing to the failure of the trains in question to connect, such patrons are obliged to remain in Appleton over night or return via Green Bay. This indirect trip makes it necessary to leave Appleton not later than 3:15 P. M. in order to connect with train No. 3 at Green Bay, thus shortening the time available for the transaction of business in Appleton about two hours. The additional cost of making the return trip via Green Bay is \$1. Witnesses stated that the connection prayed for would convenience residents of Royalton, Ogdensburg, Iola, Scandinavia, Manawa, and the territory adjacent to these villages, and that the total population of the territory which might be benefited thereby is between 16,000 and 20,000. Many specific instances in which patrons have been inconvenienced by the lack of connection were cited.

Witnesses for the Green Bay & Western Railroad Company testified that train No. 3 is now scheduled to arrive at Grand Rapids at 9:05 P. M., and that it makes an important connection for mail and passengers with a train on the line of the Chicago, Milwaukee, & St. Paul Railway Company scheduled to leave there at 9:41 P. M. This train in turn makes important connections at New Lisbon for Milwaukee, Minneapolis, and intermediate points. The depot of the Chicago, Milwaukee, & St. Paul Railway Company in Grand Rapids is located about $1\frac{1}{4}$ miles distant from the station of the Green Bay & Western Railroad Company, and witnesses for the latter company claimed that the 36 minutes now afforded between the arrival of the one train and the departure of the other is necessary for transferring the mail and the passengers and their baggage. It was

asserted that before the connection at New London junction was broken, which occurred in 1911, train No. 3 was frequently delayed in waiting for train No. 105, and as a consequence frequently failed to make its connection at Grand Rapids. Train No. 3 is a mixed train, carrying several freight cars through from Green Bay to Grand Rapids, and occasionally picking up other cars *en route*. The train master stated that this train is now operated at an average speed of $22\frac{1}{2}$ miles an hour, including stops, and that it is impracticable to increase its speed.

The division superintendent of the Chicago & Northwestern Railway Company testified that train No. 153 originates in Chicago, leaving there at 11 a. m., and is routed via Milwaukee, Manitowoc, Appleton junction, New London junction, terminating at Rhinelander. It makes important connections at Clintonville and Appleton junction. He asserted that its average speed is 28.7 miles per hour, including stops, and that to place it on a faster run would be unsafe and would interfere with the proper maintenance of its schedule.

From a careful examination of the testimony, we are of the opinion that adequate service requires that a connection be made at New London junction between the two trains under consideration. It is not reasonable for two trains which are scheduled at an important junction point only 26 minutes apart to fail to make connection, unless such an arrangement would disrupt more important connections or endanger the public from operation. A detailed study of the conditions under which these trains are operated, considered with the testimony, leads us to the belief that it is entirely feasible to make the connection prayed for without breaking any important connections of either train, or creating unsafe operating conditions. It is practicable to shorten the schedule of train No. 153 so that it will arrive in Appleton junction at 5:45 p. m. and New London junction at 6:47 p. m., allowing 20 minutes for supper at Appleton junction. It is also practicable for train No. 3 to connect with train No. 153 at New London junction at 6:47 p. m., and, in case unusual conditions delay train No. 153, to wait 15 minutes for its arrival, without breaking the connection at Grand Rapids. If train No. 3 does not leave New London junction

until 7:05 P. M., it would be able to arrive at Grand Rapids at 9:10 P. M. by operating at an average speed of $27\frac{1}{2}$ miles an hour.

During severe winter weather it is often difficult to operate trains on schedule time, even though the running time is ample under ordinary conditions. The winter is therefore an inopportune time to order a shorter schedule involving close connections. For this reason April 1, 1915, will be fixed as the date upon which the change herein ordered shall become effective.

Counsel for the Chicago & Northwestern Railway Company has emphasized the fact that train No. 153 is an interstate train. However, this train has recently superseded a strictly intrastate train, No. 105, which was operated between Milwaukee and Rhinelander, and the change was made subsequent to the filing of the complaint herein. The Commission will not hesitate to require an interstate train to stop or to make proper connections within the state when such changes are necessary for adequate intrastate service.

It is therefore ordered that the respondents, the Chicago & Northwestern Railway Company and the Green Bay & Western Railroad Company, operate their trains No. 153 and No. 3 now scheduled to leave Milwaukee at 1:15 P. M. and Green Bay at 4:50 P. M. respectively, so that they shall connect for the interchange of passengers at New London junction at 6:47 P. M.

April 1, 1915, is considered a reasonable date at which the connection herein ordered shall be made.

Railroad Commission of Wisconsin, by David Harlowe, Halford Erickson, Commissioners.

WISCONSIN RAILROAD COMMISSION.

HUGHSON ET AL.

v.

DULUTH, SOUTH SHORE, & ATLANTIC RAILWAY
COMPANY.

Railroads — Jurisdiction — Intrastate service of interstate trains.

The Wisconsin Railroad Commission has jurisdiction over interstate

trains with respect to adequacy of train service, so long as the jurisdiction is not so exercised as to be an unwarranted interference with interstate commerce.

Railroads — Jurisdiction — State authority to require adequate local service.

The several states have power to regulate interstate train service by statute or through their Commissions, and aside from statutory requirements, the question of whether a railroad is performing its primary duty of furnishing reasonably adequate local service is one for the Commission to determine.

Railroads — Jurisdiction — Excursion trains as special service.

The Wisconsin Railroad Commission lacks jurisdiction and authority to compel a railroad to operate beyond its present stopping point a Sunday train operated only during the summer months as an excursion train, inasmuch as such operation constitutes a special service in addition to the number of trains regularly operated or required by statute, is a service which the railroad is not compelled to furnish, and which, if it does furnish, is wholly within its discretion as to time and extent of the service, and furthermore, as this service is not subject to the same liabilities as the regular train service.

Railroads — Adequate train service.

The Wisconsin Railroad Commission will not order further service to communities receiving the full quantum of train service required by statute, though not the maximum, where it appears that the increased amount of business which the company would obtain from the operation of another train would fall short of the increased expense of operation, and it further appears that the service already furnished is adequate for the present needs of the communities.

[January 23, 1915.]

PETITION to require an extension of Sunday excursion train service; dismissed.

Appearances: J. A. Little for the petitioners; Thomas S. Woods for the respondent.

By the **Commission**: The petitioners allege that the failure of the Duluth, South Shore, & Atlantic Railway Company to operate its summer Sunday excursion train from Superior beyond Lake Nebagamon results in inadequate Sunday train service at Winnebiquon, Campbell's Mill, and other points between Lake Nebagamon to Iron River or Bibon.

The respondent in its answer states that the present service is reasonably adequate; that the increased business resulting from an extension of the run of the train would not compensate the company for the increased cost of its operation; and finally,

the Commission has no jurisdiction in the matter for the reason that (1) the train is interstate, and (2) is a Sunday excursion train, and therefore a form of special service over which the Commission has no authority as to the compulsion of extension of operation.

The respondent also denies the charge of the petitioner that the train in question was operated from Duluth and Superior only as far as to Lake Nebagamon during the summer of 1914 for the express purpose of evading the order of the Commission rendered December 12, 1913 (*Hughson v. D. S. S. & A. R. Co.* 13 Wis. R. C. R. 406), in which it was required to stop the train at Winnebijou.

Hearings were held at the city hall at Superior on July 29 and August 21, 1914, and at Madison on September 8, 1914. J. A. Little appeared for the petitioners and Thos. S. Woods for the respondent.

The case is in substance a continuation of the issues considered in *Hughson v. D. S. S. & A. R. Co.* supra, and in order to get a thorough understanding of the situation a statement of the facts in that case will be here appropriate.

In the case referred to, the petitioner, *Hughson*, complained that the Sunday excursion train of the respondent, running from Duluth and Superior to Bibon, did not stop at Winnebijou, and after due consideration, the Commission issued an order requiring the respondent to stop the train at Winnebijou. As the train is operated only during the summer months, it had been discontinued in the summer of 1913 before the order of the Commission was rendered. In the summer of 1914, as the testimony shows, a change was instituted by the respondent, and the Sunday excursion train was operated only as far as Lake Nebagamon, $5\frac{1}{2}$ miles west of Winnebijou, thereby depriving the latter place of the facilities of that train.

The petitioners assert that part of the train, usually the engine and a baggage car, is run on to Iron River, passing through Winnebijou without stopping. The company's representative stated in reply that as there are not facilities at Lake Nebagamon necessary for turning the engine, it is run to Iron River for

that purpose; but that facilities for turning the train are to be installed at Lake Nebagamon.

The testimony in the previous case was introduced in evidence.

The petitioner, Hughson, who lives in Superior and owns a farm near Winnebijou, testified that the failure of the respondent to operate the train in question beyond Lake Nebagamon results in great inconvenience to him. He stated that in order to get to his property on Sundays, he is now compelled to go on the Northern Pacific Railway from Superior to Brule and walk about 2 miles from that place, and can remain there only a few hours if he desires to get back to Superior Sunday night. If the respondent's Sunday excursion train were operated to or through Winnebijou, however, he could reach his property from that place by a walk of only $\frac{3}{4}$ mile, could remain most of the day, and still get back to Superior Sunday night.

The other petitioner, Larry Brennan is in about the same situation with respect to his property near Campbell's Mill. He stated that since the respondent's Sunday train has not been operated beyond Lake Nebagamon, he is compelled to go from Superior to Muskeg over the Northern Pacific Railway, and has the same walk of 3 miles, and can make only a short stay, as does Mr. Hughson.

Other witnesses testified to the same effect; that it is now practically impossible for them to get from Superior to the stations on the respondent's line east of Lake Nebagamon and back on Sunday. They state that they must either leave Superior Saturday evening and return Monday morning within business hours, or use the Northern Pacific trains and walk across to Winnebijou or Campbell's Mill, in which latter event they can make a stay of only a few hours.

Mr. James Maney, general passenger agent of the Duluth, South Shore, & Atlantic Railway Company, testified that the train in question was strictly a summer proposition, and that its operation depended on weather conditions, and that the purpose of the company in operating it at all was to develop, if possible, summer resorts at the various stations.

At the second hearing exhibits consisting of traffic data of the

earnings of the respondent's Sunday excursion train were submitted by the attorney for the company. These show the amount of business done by the train during the season of 1913 from Duluth to Bibon and during the summer of 1914 up to August 16, from Duluth to Lake Nebagamon.

	1913	1914
	Duluth to Bibon Total Revenue	Duluth to Lake Nebagamon Total Revenue
Sundays in May		
3d	\$ 134.93	\$ 80.99
4th	50.03	131.79
Sundays in June		
1st	173.85	67.84
2d	175.79	98.83
3d	136.36	69.69
4th	166.25	48.59
5th	159.36	
Sundays in July		
1st	341.76	180.11
2d	267.79	102.39
3d	254.80	136.67
4th	243.05	276.77
Special		263.82
Sundays in August		
1st	249.55	92.82
2d	317.27	90.64
3d	282.15	154.79
4th	167.02	
5th	119.15	
Sundays in September		
1st	76.35	
2d	86.53	
3d	109.03	
4th	74.30	
Sundays in October		
1st	50.71	
2d	122.62	
	\$3,758.86	

It is our opinion that the request of the petitioners cannot be granted, due to a lack of jurisdiction by the Commission to compel the operation or extent of run of the train in question.

The fact that the train is interstate does not deprive the Commission of authority over it, and the argument advanced by the respondent in this respect is not well grounded.

The Commission has jurisdiction over interstate trains with respect to adequacy of train service so long as this jurisdiction is not so exercised as to be an unwarranted interference with interstate commerce. The primary duty of a railroad is to furnish reasonably adequate local service, and the question of adequacy in particular cases is, aside from statutory requirements, one for the Commission to determine. Thus, when a regulation by the Commission of an interstate train does not, under the circumstances, operate to interfere with interstate commerce, it is valid. *Morris v. C. M. & St. P. R. Co.* (1913) 12 Wis. R. C. R. 560; *Schlossstein v. C. B. & Q. R. R. Co.* (1911) 8 Wis. R. C. R. 242. This doctrine has been upheld by the Wisconsin supreme court (*Chicago, B. & Q. R. Co. v. Railroad Commission* [1913] 152 Wis. 654, 140 N. W. 296), and the power of the states to make regulations of train service by statute or through their Railroad Commissions has been affirmed by the United States Supreme Court in numerous decisions (*Diamond Glue Co. v. United States Glue Co.* 187 U. S. 611, 47 L. ed. 328, 23 Sup. Ct. Rep. 206; *Atlantic Coast Line R. Co. v. North Carolina Corp. Commission*, 206 U. S. 1, 51 L. ed. 933, 27 Sup. Ct. Rep. 585, 11 Ann. Cas. 398).

It is upon another point, one partly advanced by the respondent, that the Commission considers that it lacks jurisdiction in this case. The train is not one regularly operated by the respondent, and is not included in its list of trains giving regular service to stations on respondent's line, including Winnebijou and Campbell's Mill. As the testimony shows, it is operated only during the summer months, only on Sunday, and as an excursion train. It may be clearly considered as special service furnished in addition to the regular necessary train service, and as such the time and extent of its operation is subject only to the discretion of the company.

Excursion trains are a form of special service in addition to the number of trains regularly operated or required by statute. They have been defined as trains "which go from one place to another with a view to people getting to that other place on cheap

terms, and very frequently upon the condition that the railway company is not to be delayed or inconvenienced by people taking baggage with them." (17 Cyc. 873, 874.) While this definition could hardly be applied to the respondent's Sunday excursion trains running from Duluth and Superior to Lake Nebagamon, yet it is admitted on all sides that this train is additional to the regular train service of the company at the localities in question, and as such it is our opinion that the details of its operation, the time or extent of run, should be left to the company. Excursion trains, as a special form of service furnished by carriers, and not subject to the same liabilities as the regular train service, have been so recognized by the courts. In *Crary v. Lehigh Valley R. Co.* (1902) 203 Pa. 525, 59 L.R.A. 815, 93 Am. St. Rep. 778, 53 Atl. 363, 29 Am. & Eng. R. Cas. 119, it was held that a passenger, when riding on an excursion train and assuming all the risks of the journey, waives the common-law rule making the carrier liable for his safety, and is in a similar position to a licensee, having to prove affirmatively negligence on the part of the carrier in order to recover for injuries sustained.

The special nature of excursion train service is further recognized by the attitude of the courts toward excursion tickets. They are considered as a special form of contract; their use and validity can be limited to a certain day or designated train, and may be refused by the carrier upon other days or other trains. *Nolan v. New York, N. H. & H. R. Co.* (1876) 9 Jones & S. 541; *State v. Campbell* (1867) 32 N. J. L. 309. Railroads may designate the time limit in which such tickets will be good (*Pennington v. Philadelphia, W. & B. R. Co.* [1883] 62 Md. 95), and when the terms of an excursion ticket provide for its exchange for another, good at a later date, the original ticket is not good at the later date (*Howard v. Chicago, St. L. & N. O. R. Co.* [1883] 61 Miss. 194).

These and many other cases support the view that the excursion train is a special form of service which the railroad is not compelled to furnish, and which, if it does furnish, is wholly within its discretion as to time and extent of the service, subject only to the general police power of the state with respect to public health, safety, or equal rights. When the respondent operated the train to Bibon and failed to stop it at Winnebijou, the

Commission's jurisdiction arose in its authority under the statute to prevent discrimination. However, as the company sees fit now to furnish this special service only as far as Lake Nebagamon, the Commission cannot intervene to compel it to be furnished to more distant stations. It is, of course, recognized that the operation of this train as far as Iron River or Bibon would be a great convenience to the petitioners and to other residents of and visitors at Winnebiqua, Campbell's Mill, and other stations along the line, but inasmuch as the train is one of a special nature, an excursion train run on Sundays during the summer months only, the Commission considers that it lacks jurisdiction and authority to compel the respondent to operate the train beyond Lake Nebagamon.

This consideration, it should be noted, is entirely aside from that of adequate train service at the points in question. At present, the villages of Winnebiqua and Campbell's Mill receive the full quantum of train service as required by statute, and while this amount of service is not the maximum, and it is within the power to order further service if necessary, present conditions do not warrant such an order. The increased amount of business which the company would obtain from the operation of another train daily or on Sunday would fall short of the increased expense of operation, and further, the service already furnished is adequate for the present needs of the communities.

It is therefore ordered that the complaint of the petitioners against the Duluth, South Shore, & Atlantic Railway Company be and the same is hereby dismissed.

Railroad Commission of Wisconsin, by John H. Roemer, Halford Erickson, David Harlowe, Commissioners.

WISCONSIN RAILROAD COMMISSION.

WISCONSIN VETERANS' HOME

v.

**WAUPACA ELECTRIC LIGHT & RAILWAY COMPANY, and
CITY OF WAUPACA, Intervener.**

Commission procedure.

A preliminary objection to the appearance of an intervener on the

ground that complainant had not been served with a copy of the plea is not serious where the plea was not filed until after the hearing, ample opportunity having been given to file briefs, and the parties having notified the Commission subsequent to the hearing that they did not desire to introduce further testimony.

Jurisdiction — Inherent duties — Franchise obligations.

The Commission is without jurisdiction to require a street railway to carry freight, in the absence of obligation imposed upon it by its franchise, inasmuch as the duty to carry freight is not inherent in the business.

Constitutional law — Additional servitude — Freight.

The carriage by a street railway of freight not destined for the inhabitants of a city is not a proper urban servitude upon the abutting owners, but an additional servitude, and under the constitution neither a city nor state can authorize or require such service without provision for compensation to or releases from abutting owners.

Franchises — Construction — Carriage of freight.

Permission to carry freight within a city will not be inferred from an ambiguous provision in a street railway franchise that parcels other than hand baggage may be carried upon the cars, especially where an ordinance granting the right, afterwards passed by the common council, was defeated upon submission to popular vote.

Jurisdiction — Franchise — Permissive words.

The Commission is without jurisdiction in the first instance to compel a street railway to assume the carriage of freight, even though its franchise grants the requisite authority, if the granting words are permissive only, and not mandatory, and the street railway has never undertaken such service.

Statutes — Construction — Street railways — Carriage of freight.

A city has the power to grant a street railway company the right to carry passengers separate and apart from the right to carry freight, under a statute providing that a city may grant to a street railway the use of its streets to lay tracks and run cars for carriage of freight and passengers.

[January 28, 1915.]

PETITION to require street railway to carry freight; dismissed.

Appearances: F. S. Veeder for complainant; Irving P. Lord for respondent; and L. D. Smith for intervener.

By the **Commission**: The petition alleges that the respondent has constructed, and is operating, as duly authorized, an electric railway from a point in the city of Waupaca, Waupaca County, to a point in the town of Farmington, Waupaca County, a distance of approximately 4 miles, of which about 1 mile is in the

city of Waupaca, and the remainder in the town of Farmington; that complainant is located on the banks of one, of what is known as the Chain of Lakes in the town of Farmington, Waupaca County, some 4 miles distance from the stations of the Soo Railway and of the Green Bay Railway in the city of Waupaca; that respondent's road is the only railway by which "said Wisconsin Veterans' Home can be reached, or that comes nearer to said Home than said city of Waupaca;" that under the statutes of the state, respondent's articles of association, and franchises granted by the city of Waupaca and the town of Farmington, the respondent is authorized to transport freight and particularly the freight of the complainant required for the purposes of the Wisconsin Veterans' Home, but that the city of Waupaca denies that respondent is authorized to transport freight over its line within the limits of the city; that as a consequence respondent refuses to carry over its line freight consigned to or from Wisconsin Veterans' Home, and complainant is compelled to, and has for many years had all its freight transported over the wagon roads of said city and town from the stations of the railways known as the Soo line, and the Green Bay and Waupaca line to its buildings in the town of Farmington; that among other items of freight necessarily so transported over the highways, with resulting injury thereto, and expense to the town of Farmington, is coal to the amount of approximately 4,500 tons annually, and that complainant is advised and believes it is required to expend much larger sums for transporting its freight than would be required were it transported by respondent railway, to the great detriment of complainant, of the public at large, and of the state of Wisconsin, as the complainant alleges that the expense of keeping, providing, and caring for the members and inmates of the Wisconsin Veterans' Home, and of paying and maintaining its employees, falls principally upon, and is paid mainly by, the state, under and pursuant to statute. The complainant alleges that it is to the interests of the state of Wisconsin and the public at large that respondent be compelled to carry freight, as it is authorized to do under the statutes of the state, its articles of association and franchises. Wherefore, complainant asks that respondent be required to transport

over its line of road, its freight of all kinds between the Wisconsin Veterans' Home and points reached by respondent railway, and for such other relief as may be just and equitable.

The respondent, in its answer, admits all the allegations of the petition except that part alleging authority in it under the statutes, its articles of association and franchises to carry freight, as to which it enters neither an admission nor denial, but joins with the complainant in asking a judicial interpretation of its rights and privileges contained in such franchises. Wherefore, the respondent asks that the Commission duly consider complainant's petition, and render its opinion and decision therein in due course.

The city of Waupaca, intervener, filed a plea objecting to the jurisdiction of the Commission in the matter on the following grounds: First, because the franchise in question does not permit the carriage of freight through the streets; second, because the voters of the city, and its common council, have repeatedly refused such permission; third, because, at the time of the granting of the franchise in question, the city had no power, under the laws of the state, to grant respondent company the right to carry freight upon its road; fourth, because the Railroad Commission has no authority to grant, in the first place, rights for the use of the streets of the city for street railway, interurban or commercial purposes, or to extend or decrease rights granted by any such franchise, such powers being vested solely in the common council of the city; and fifth, because the transportation of freight for complainant, and not for other shippers, would be an unlawful discrimination in favor of complainant. Wherefore, the city of Waupaca asks that complainant's petition be dismissed.

The matter came on for a hearing, pursuant to notice, September 29, 1914, at the city hall at Waupaca. The complainant appeared by F. S. Veeder of Veeder & Veeder; the city of Waupaca, intervener, by L. D. Smith, and the respondent by Irving P. Lord. A brief and reply brief were submitted for complainant by Veeder & Veeder, and in behalf of city of Waupaca by L. D. Smith, city attorney, and B. R. Goggins, of counsel.

A preliminary objection was made at the hearing to the ap-

pearance of the intervener to argue the question of the Commission's jurisdiction in the premises, because the complainant had not been served with a copy of the plea. The plea was not filed until shortly after the hearing, however. But as the parties were given amply opportunity to file briefs, and as they notified the Commission subsequent to the hearing that they did not desire to introduce further testimony in regard to the question of jurisdiction, it does not appear that the rights of any, including complainants, were impaired, or that this objection is a very serious one.

The extent of the rights conferred on respondent by the city of Waupaca and the jurisdiction of the Commission in the premises, are the matters in dispute. The merits of the requested order were not extensively gone into at the hearing, or subsequently. If, under the franchise, the respondent is under the obligation to carry freight, it seems clear that the Commission has the power to issue the desired order. The question was considered by the Commission in the case of *Brown v. Janesville Street R. Co.* (1910) 4 Wis. R. C. R. 757. The Commission said (p. 760): “. . . we are petitioned in this proceeding to require the respondent to specifically perform its franchise obligations to maintain and operate the branch line in question,” and, as to its power in the premises (p. 761): “We are convinced that power is vested in the Commission to enforce, in any proper case, the performance of the public functions of a railway company (street railway in this case) when the same have been once undertaken by the company. . . .”

If, however, the respondent is under no obligation, franchise or otherwise, to carry freight, the Commission is without jurisdiction in the matter. The carriage of freight by street railways, in the absence of a duty, imposed by franchise, has never, as far as we are aware, been held one of the duties inherent in that business, but rather the contrary. Such being the case, the matter rests exclusively with the city. “In cities the common councils are clothed with the power of granting franchises, authorizing the construction or extension of electric railroads within their corporate limits,” such power being “vested ex-

clusively in city councils." *Lang v. LaCrosse* (1908) 3 Wis. R. C. R. 292, 296, 297.

Before we can pass to the merits of the desired order, then, two questions must be answered affirmatively,—first, assuming that the franchise in question grants the respondent the requisite authority, is it free to haul freight over its line, as desired, as far as other considerations are concerned; and, second, granting that the authority is there, does the franchise also impose a positive duty, as well as grant a privilege?

A consideration of the cases, more or less analogous in principle, which have been passed upon by our supreme court, leads to the conviction that respondent could not lawfully render the service, even though ordered, without securing releases from, or making compensation to, abutting property owners. The proposed service would cast an additional burden upon the fee, and neither the city nor state could authorize or require the service without provision for compensation to or releases from abutting owners, since to do so would be contrary to the inhibition of the Constitution against taking private property without paying just compensation therefor. Even should the city or state authorize the desired service, it seems clear it would not bind the abutting property owners in the absence of a settlement with them, though it might bind the public; that is, if, as seems clear, the carriage of freight would impose an additional servitude. *Pennsylvania R. Co. v. Montgomery County Pass. R. Co.* 167 Pa. 62, 70, 27 L.R.A. 766, 46 Am. St. Rep. 659, 31 Atl. 468. In that case township, and not city, authorities, were concerned, but the principle seems the same, as it was held they could not impose an additional servitude on abutting owners, the additional servitude in this case being electric interurban transportation over township roads. As to the power of the state itself, the matter was put as follows in the case of *Cincinnati & S. G. A. Street R. Co. v. Cumminsville*, 14 Ohio St. 523, 549, 550: "We see nothing in the street railroad act which induces the belief that the legislature intended to authorize either companies or public authorities to grant to railway companies anything more than an interest in the public easement; nor do we see any reason to doubt that such a location may ordinarily be

made as to bring the necessary structures for the use of these companies within that interest, and without any invasion of private rights. But if it were otherwise, and it were manifest that the legislature intended to allow these companies to occupy and impair the easements attached to improved lots, and that the necessary structures could not otherwise be constructed or used, we should still be of the opinion that it could not be done without compensation."

The general principles above stated, leaving the question of carriage of freight out of consideration for the moment, have been enunciated in the following Wisconsin decisions: *Zehren v. Milwaukee Electric R. & Light Co.* 99 Wis. 83, 41 L.R.A. 575, 67 Am. St. Rep. 844, 74 N. W. 538, that an electric interurban railway for the carriage of passengers casts an additional burden upon a county highway for which abutting owners are entitled to compensation; *LaCrosse City R. Co. v. Higbee*, 107 Wis. 389, 51 L.R.A. 923, 83 N. W. 701, that an urban electric street railway, as ordinarily constructed, does not impose an additional burden on the fee of the city street; and *Youkin v. Milwaukee L. H. & T. Co.* 120 Wis. 477, that the operation of interurban trains and cars over street railway tracks through the city imposes an additional burden upon the land of abutting owners. In *Schuster v. Milwaukee Electric R. & Light Co.* 142 Wis. 580, 126 N. W. 26, where it appeared that the interurban cars were larger and heavier than street railway cars, run at greater speed, and sometimes in trains of two or more cars, the principle was conceded by counsel, the only mooted point being the character of relief to which plaintiffs were entitled.

The Commission recognized and applied the principle in the case of *Janesville v. Rockford & Interurban R. Co.* (1912) 9 Wis. R. C. R. 502. Complaint was made that the respondent had abandoned operation over a certain route, and begun operation over another route, contrary to the terms of its franchise. The Commission said (pp. 507 and 508): "The respondent's franchises authorize the use of the two routes for both urban and interurban service. As interurban service would impose an additional servitude upon the highway, such franchise only gave it the right to occupy streets for interurban railway purposes

as against the public. It had no right to use such streets without first having acquired the consent of the abutting property owners by mutual agreement, or secured the right through condemnation proceedings. When it operated its interurban cars, it invaded the right of the adjoining property owners." The Commission then held that the expense of acquiring the right of interurban operation over the route in question would be greater than would be justified, under the circumstances of the case, and, after considering one or two other matters involved, dismissed the petition.

The question of freight, as involved in the present proceeding, has apparently not been directly passed upon by our own court. However, in *Waszkiewicz v. Milwaukee Electric R. & Light Co.* 147 Wis. 422, 133 N. W. 596, the court, sanctioning the carriage of freight, in that particular instance, was careful to point out that defendant was "carrying material and supplies for the use of the company in maintaining its railway system, and not acting as a common carrier of freight for hire." The court held that defendant had such a right, and cited *Caswell v. Boston Elev. R. Co.* 190 Mass. 527, 77 N. E. 380, which held to the same effect, though recognizing that the carriage of freight for hire might be unlawful.

In the present case, however it might be held as to city freight alone, it would seem clear that the carriage of freight not destined, chiefly, at least, or at all in the last ordinance proposed (Int. Ex. 3), for the inhabitants of the city, could not be regarded as a proper urban servitude. In fact, the ordinance in question, which was to grant the present respondent, the applicant there, the right to carry freight for present complainant, and was referred to the Board of Public Works, was opposed in that body's minority report on the ground, among others, that the company should first make settlement with at least 75 per cent of the abutting owners.

So it appears, for the foregoing reasons, that the Commission is without power to effectively order the desired service, even though there might be no other objection. However, there is at least one other serious difficulty, if not more, in the way of granting complainant's petition.

It is settled law that "the grant of a franchise, in so far as it is ambiguous, is to be strictly construed against the grantee, and in favor of the public," and "that nothing will pass unless it is granted in clear and explicit terms." 19 Cyc. 1459, and authorities there cited. There is no clear, explicit grant in the ordinance in question, of the right to carry freight, nor is such an obligation anywhere made a part of the consideration for the grant of the privilege of using the streets. The only suggestion of such a grant is contained in the following words: "Parcels other than hand luggage may be carried upon the cars used on said railway, for the carrying of which a compensation may be collected." (§ 19) The Commission is of the opinion that to hold that the carriage of parcels means the carriage of freight in the ordinarily accepted term, at least, and as desired by the complainant, would certainly not be warranted.

That the question was considered at least doubtful seems clear from the testimony and exhibits in the case. The only grant or franchise of the city of Waupaca was adopted April 2, 1898. On April 28, 1899, the town of Farmington passed a franchise granting the use of certain highways, subject to certain restrictions, and containing the same identical words as to the carriage of parcels, and no more on the question of freight. On November 17, 1913, the town board passed an ordinance expressly granting respondent the right and privilege for the carriage of passengers, express, mail, and freight. In 1906, an ordinance was before the common council of the city of Waupaca to grant respondent the right to haul freight in carload or less than carload lots. In 1911, an application for authority to carry freight was made to the council by respondent's president and general manager. On December 2, 1913, a somewhat similar ordinance, granting authority to carry freight, for complainant only, however, was finally passed. A popular vote was demanded on this ordinance. The ordinance was submitted to such a vote on April 2, 1914, and was defeated by a vote of 238 for, 334 against. In view of the language of the franchise, and the subsequent history of the matter here at issue, it would be difficult to hold that there is not at least considerable ambiguity and doubt as to the power contended for having ever been conferred, so that on the

basis of the commonly accepted rule of construction, stated above, the Commission's conclusion must be against the power existing in the grantee or respondent.

However, there is another ground on which the Commission's power to make the desired order may well be questioned. The words of the franchise, in so far as they directly by any possibility cover the carriage of freight in its ordinarily accepted term, are permissive, and not mandatory. From the testimony, it appears that the respondent has never undertaken the transportation of freight for compensation under this clause. In other words, it has never assumed such an obligation. Now, however the law may be as to the performance of an obligation once undertaken, under a merely permissive grant, it seems clear that the assumption of such an obligation, in the first instance, cannot be compelled. Such a view seems the only reasonable one. Wyman thus puts the matter in his work on public service corporations: "The general doctrine now is that a permissive charter simply enables the company to build without making construction obligatory, although it will often be provided that the part of the franchise not used shall be forfeited for nonuser. In establishing the present rule, the leading English case declared that to say that there is no difference between words of requirement and words of authority when found in such acts is simply to affirm that the legislature does not know the meaning of the commonest expressions, nor appreciate the various ways in which such a situation may be treated in different cases." 1 Wyman, § 304. In the foregoing, authority to build is spoken of, but the principle is the same in the matter under consideration. In either case authority is required. If, then, the words in question do grant requisite authority, as we very strongly doubt, they are permissive only, not mandatory, and the duty never having been undertaken, its assumption now rests with the respondent, and not with the Commission.

It remains to consider two contentions of respondent: (1) that under the words of the statute (§ 1862), the city had no option; and (2) that the effect of the indeterminate permit, which respondent received for its old franchises, was to vest the Commission with the power to make the desired order.

Section 1862 provides: "Corporations for constructing . . . street railways may be formed. . . . Any municipal corporation or county may grant to any such corporation . . . the use, upon such terms as the proper authorities shall determine, of any streets . . . within its limits for the purpose of laying . . . tracks and running cars thereon for the carriage of freight and passengers. . . ." It is complainant's contention that the legislature therein manifested an intention of requiring that future franchises should be for the double purpose of transporting freight and passengers. This construction would hardly seem the natural one. If there were such an intention as to electric street railways, it would be natural to expect it to apply to interurban and suburban roads even more than to purely urban ones. But § 1863, which applies to such roads, uses the words "freight or passengers." So that the more natural construction would seem to be that no such requirement was intended, but merely authority to the local body to grant both rights, if it should see fit.

The constitutionality of § 1862 was challenged in the case of *Linden Land Co. v. Milwaukee Electric R. & Light Co.* 107 Wis. 493, 83 N. W. 851. The ground of objection urged was that the legislature authorized the grant of the use of the streets for the carriage of freight without providing for the payment of compensation to abutting owners. The court, after conceding, for the purposes of the case, that a street railway created for the carriage of freight would impose an additional burden on the fee, and after noting that the statutes contained no provision authorizing such companies to condemn private property in the streets of cities or villages, held as follows on the question (p. 512): "It is not quite clear how this deficiency in the law affects the corporate character of defendant corporation. It may render it impossible for it to lay or operate a track for the transportation of freight without actually purchasing the right from private owners to cross their lands, but the legislature certainly had power to authorize the formation of just such corporations. . . . We think it may reasonably be said that this law was only intended to authorize corporations to use streets with the consent of the city for carriage of freight as against the rights

of the public, and not as against private owners, leaving such private owners in full possession of their rights to stop the construction, insist on compensation, or give their consent, as they chose. . . . This construction seems to us to be entirely reasonable. . . .

“Furthermore, it will be noticed that the corporation does not obtain its right to use any given street from the terms of its charter. It might exist for a century, and if no municipality saw fit to grant it a franchise to use its streets, it could do no business. In the present case, the city has not chosen to grant it any right to carry freight upon a single street. All the franchises which it owns by purchase, as well as the franchise now in question, simply confer the right to carry passengers only; or, in other words, to build and maintain a street railroad in the usual and ordinary sense of the term; and we do not see how it can for a moment claim the power to carry freight over its lines in the city of Milwaukee, or do anything more than maintain a street railroad for the carriage of passengers only.”

Apparently it never seriously occurred to the court or parties to the action that the legislature intended to make the two grants inseparable. By every reasonable intendment the legislature must have known that such a requirement would make every municipal franchise granted under that section the source of litigation, and, in blocking the operation of the line for the carriage of freight, defeat the carriage of passengers.

It remains to consider the effect of the indeterminate permit under which respondent now operates, in so far as complainant's contention is concerned, that the Commission is thereby vested with power to order the desired service. The effect, in general, of an indeterminate permit, has been so fully discussed in the decision of the Commission, and in several decisions of our supreme court, that little need be said here.

In the view taken of the principal questions, it becomes unnecessary to consider other points raised. The fact that the complainant is a semipublic institution is believed immaterial, as far as jurisdiction is concerned in this proceeding. The intervener contends in its brief that there is no allegation of assignment to respondent of the franchise under which respondent

assumes to operate, but that if such franchise was duly assigned, it was, for various reasons set forth, void in its inception. Upon this and other contentions urged by intervener, it is unnecessary to express an opinion, since, for the reasons already stated, the Commission is without jurisdiction and the petition must therefore be dismissed.

Now, therefore, it is ordered that the petition herein be and the same hereby is dismissed.

Railroad Commission of Wisconsin, by John H. Roemer, Halford Erickson, David Harlowe, Commissioners.

WISCONSIN RAILROAD COMMISSION.

**MILWAUKEE MILK & CREAM SHIPPERS ASSOCIATION
OF CALHOUN**

v.

CHICAGO & NORTHWESTERN RAILWAY COMPANY.

Railroad — Service — Discrimination.

A railroad company was ordered to furnish a reasonable morning hour service during winter months to shippers of milk and cream from a designated point, comparable in convenience with that accorded to other shippers located on the same line, where it appeared practicable to give such service.

[January 23, 1915.]

PETITION for more convenient morning milk train service; granted.

Appearances: William Kern for the petitioner; E. E. Nash for the respondent.

By the **Commission**: The petition alleges in substance that milk shippers at Calhoun are now obliged to have their milk ready for shipment at 7 A. M., and that many farmers live from 3 to 5 miles from Calhoun, and cannot conveniently haul their milk to the station at that hour, during the winter, when the roads are drifted with snow. It further alleges that the Chicago & North Western Railway Company has been requested to provide later milk service by special switching arrangements, or by stopping train No. 610, which now handles milk at stations west

of Calhoun, but that the company has refused to make the desired change, thereby discriminating against Calhoun. The Commission is therefore asked to take such action as it deems proper in the premises.

The respondent in its answer alleges that it has established a special delivery service from Calhoun to Milwaukee to take care of the milk and cream traffic, and that to stop train No. 610 for this purpose would result in a delay of from fifteen to twenty minutes, and interfere with connections now made at Jefferson Junction and Milwaukee. It therefore asks that the complaint be dismissed.

A hearing was held at Milwaukee on December 21, 1914, at which William Kern appeared for the petitioner and E. E. Nash for the respondent.

The testimony shows that prior to July 3, 1914, milk and cream were accepted for shipment at Calhoun by train No. 610, which is scheduled to leave Madison at 8:05 A. M., and to arrive in Milwaukee at 10:55 A. M., passing Calhoun at about 10:10 A. M. On July 3, 1914, this train discontinued its stop at Calhoun, and a special delivery service was provided for carrying the milk and cream at that station, leaving at 7 A. M. Shippers are obliged, under this arrangement, to have their products at the station at 6:45 A. M. Witnesses complained that during the winter months it is a hardship to haul over drifted roads before daylight, and that they are unnecessarily compelled to milk at an unreasonably early hour. They testified that train No. 610 now stops at other stations between Jefferson Junction and Milwaukee for receiving shipments of milk and cream. The Milwaukee Milk & Cream Shippers Association of Calhoun consists of about forty farmers, who ship from 100 to 140 cans a day.

Witnesses for the respondent stated that the loading of milk and cream at Calhoun on train No. 610 was discontinued on account of the delay which it occasioned, which was estimated at from ten to fifteen minutes. This train is scheduled to arrive in Milwaukee at 10:55 A. M., and connects with train No. 206 for Chicago, leaving at 11 A. M., and train No. 113 for Escanaba, leaving at 11:10 A. M. It also makes connections at Madison

and Jefferson Junction. The assistant superintendent said that considerable difficulty has been experienced in making the Milwaukee connections, and that complaints have been made by patrons on account of the lateness of the train in question. He stated that the existing service is operated in connection with other work, being assigned to one of the special crews which is on duty at night, and which works overtime in order to make the movement at Calhoun. The labor cost of this service was said to be about \$5 and the revenue from \$10 to \$15 per day. Officials asserted that to operate the special service at a later hour would necessitate the employment of an additional crew, at a cost unwarranted by the revenue.

A member of our engineering staff has made a study of the operating conditions surrounding this complaint. He reports that at the present time the work at the Butler yards is such that it is necessary to employ extra crews occasionally in addition to the four special night crews regularly employed. He expresses the opinion that it is possible to arrange the work of the special crews so that the service to Calhoun can be run at a later hour, as requested by the petitioner. He also reports that train No. 113, north from Milwaukee is held for connection with train No. 610, and that train No. 206, south from Milwaukee, is not held for the connection, but that a second section is run if train No. 610 is late.

In the light of the testimony it is our judgment that the service rendered to the shippers of milk and cream at Calhoun is unreasonably discriminatory. Other milk shippers on the line between Jefferson Junction and Milwaukee are served by train No. 610, scheduled to leave Jefferson Junction at 9:10 A. M. Under such circumstances it seems unreasonable to require the shippers at Calhoun to haul their milk to the station by 6:45 A. M. during the winter months, if it is practicable to give them later service similar to that accorded other shippers. Train No. 610 has for many years rendered this service, and can probably continue to do so without serious interference with its schedule. However, if the company prefers to furnish the shippers at Calhoun a service comparable with that accorded to other shippers located on the same line in some way other than by

stopping train No. 610, such an arrangement will be satisfactory.

It is therefore ordered that the respondent, the Chicago & North Western Railway Company, stop its train No. 610 now scheduled to leave Madison at 8:05 A. M. at Calhoun to receive shipments of milk and cream during the period from December 15 to March 15 each year; or, at its option, provide other service in said period during the forenoon between Calhoun and Milwaukee for said shipments, leaving Calhoun not earlier than 8:30 A. M.

Railroad Commission of Wisconsin, by David Harlowe, John H. Roemer, Halford Erickson, Commissioners.

WISCONSIN RAILROAD COMMISSION.

JOHN J. BLAINE

v.

CHICAGO, MILWAUKEE, & ST. PAUL RAILWAY COMPANY.

Railroads — Service — Adequate Sunday trains.

A railroad was ordered to operate a Sunday passenger train in each direction between specified points on a branch line, where the existing service was inadequate, and the Commission felt that, after a reasonable period of trial, the operation of such a train should prove remunerative.

[January 28, 1915.]

PETITION for additional Sunday train service; granted.

Appearances: J. J. Blaine in his own behalf; J. N. Davis for respondent.

By the **Commission**: The petition alleges in substance that the train service furnished by the Chicago, Milwaukee, & St. Paul Railway Company between Prairie du Chien and Madison, with particular reference to the service west of Lone Rock, is inadequate and discriminatory. The Commission is therefore asked to require the respondent to render adequate service in this district.

The respondent, in its answer, denies that its service is discriminatory, and takes the position that Sunday service between

Lone Rock and Prairie du Chien is not warranted under the existing traffic conditions. It therefore asks that the complaint be dismissed.

A hearing was held at Boscobel on June 12, 1914, at which J. J. Blaine appeared in his own behalf and J. N. Davis for the respondent. The testimony shows that the passenger train service on the Prairie du Chien Division in the territory between Lone Rock and Prairie du Chien on week days consists of three trains in each direction. On Sundays a passenger train known as number 41 is operated between Milwaukee and Richland Center, leaving Milwaukee at 8 A. M., Madison at 10:55 A. M., and arriving at Richland Center at 1:10 P. M. This train returns as number 40, connecting at Madison with a train for Chicago at 3:55 P. M., and also making important connections at Milwaukee. West of Lone Rock a mixed freight and passenger train west-bound, leaving Lone Rock at 12:45 P. M., and known as number 61, is the sole Sunday service.

Witnesses complained that this train is rarely on time. Respondent's superintendent testified that since March 8, 1914, the tonnage of the train had been reduced, and that since then its variation from schedule is slight. He introduced a record for March, April, and May 1914, which shows its time of arrival as follows:

Date.	Depart Lone Rock	Arrive Boscobel	Arrive Wauzeka	Arrive Prairie du Chien
March 8, 1914	12.50	2.10	2.56	3.55
" 15, "	12.35	1.35	2.17	3.10
" 22, "	12.48	2.10	3.12	4.25
" 29, "	12.35	1.49	2.35	3.45
April 5, "	12.35	1.55	2.49	4.35
" 12, "	12.37	1.35	2.11	3.20
" 19, "	12.43	2.02	2.46	3.40
" 26, "	12.40	1.55	2.52	3.50
May 3, "	12.45	2.00	2.36	3.30
" 10, "	12.42	1.25	2.03	2.50
" 17, "	1.00	2.19	3.26	4.45
" 24, "	1.59	2.52	3.20	4.25
" 31, "	1.05	2.20	3.40	4.05
June 7, "	1.05	2.05	2.30	3.30

It appears from the testimony that under the existing service residents of Boscobel, Muscoda, and other stations between Lone Rock and Prairie du Chien, are unable to reach Madison, Milwaukee, or other points east for the transaction of business on Monday morning unless they leave on Saturday evening and spend Sunday away from home. Several witnesses stated that they have occasion to meet business appointments on Monday morning in Madison and elsewhere, and expressed the opinion that Sunday service eastbound would be used by a considerable number of people. It was urged that the present mixed train westbound is unsatisfactory, and that a Sunday passenger train westbound is needed. Witnesses also asserted that service which would enable residents of Boscobel, Muscoda, and other stations on the Prairie du Chien division west of Lone Rock to reach Madison and return on Sunday would be considerably patronized. The nearest hospitals in this territory are at Madison and Prairie du Chien, and the lack of Sunday train service makes it impossible to secure immediate hospital treatment for a patient taken suddenly sick on that day.

Respondent's superintendent testified that to extend the run of train number 41 to North MacGregor and return, with the additional service on the branch line from Lone Rock to Richland Center, would result in an increase of operating expenses of approximately \$100 per Sunday. He expressed the opinion that the additional revenue from such operation would not be sufficient to warrant its maintenance. He also pointed out that if train number 40 should continue to start from Milwaukee at 8 A. M., it could not make the extended run and return in time to make its connections at Madison and Milwaukee. It is now started at 8 A. M. instead of at 7 A. M., as on weekdays, for the benefit of patrons of lake resorts who use the Sunday service extensively.

A statement was submitted showing that during fifteen days, May 28 to June 11, 1914, inclusive, a total of 918 passengers on an average of 70 per day on week days were handled at Boscobel, apparently representing tickets sold.

The report of our engineering staff, based upon a study of the operating conditions on the Prairie du Chien division, shows that

the crews of trains number 5 and number 1 lie over in North MacGregor, Iowa, when they arrive on Saturday, and return on Monday with trains number 8 and number 4, respectively. Our engineer is of the opinion that it is feasible for these crews to operate a train to Lone Rock and back from North MacGregor so as to arrive at Lone Rock just before train number 41 westbound, and leave there just after the departure of train number 40. In his opinion it is also practicable to utilize these crews in the operation of a new train from North MacGregor to Madison in the forenoon, returning to North MacGregor in the evening. Neither of the plans suggested above would entail an operating expense so great as that estimated by the superintendent for the plan suggested by him.

From an examination of the testimony it is our judgment that the Sunday passenger train service furnished by the respondent between Madison and Prairie du Chien is inadequate, and that the operation of a passenger train in each direction on Sundays between these stations is necessary. In our opinion a morning train eastbound between Prairie du Chien and Madison, returning in the evening, would be of more service to the community than other plans suggested, and would consequently result in greater revenue to the company. It is impossible to predict with certainty the amount of traffic which such a service would create. However, we feel that after a reasonable period of trial the operation of such a train should prove remunerative. If experience should prove otherwise, the case may be reopened upon application.

It is therefore ordered that the respondent, the Chicago, Milwaukee, & St. Paul Railway Company, operate a Sunday passenger train in each direction between Prairie du Chien and Madison, said eastbound train to be scheduled to arrive in Madison not later than 10:30 A. M., and said westbound train to be scheduled to leave Madison not earlier than 2:30 P. M.

• Railroad Commission of Wisconsin, by David Harlowe, John H. Roemer, Halford Erickson, Commissioners.

WISCONSIN RAILROAD COMMISSION.

CHRIST WOEHNSNER

v.

CITY OF MILWAUKEE ET AL.

Rates — Street railways package ticket order.

An order of the Commission of August 23, 1912 (10 Wis. R. C. R. 1, 305), that a railway company discontinue a ticket rate of 25 for \$1, and sell tickets in packages of 13 for 50 cents, was intended to abolish a former rate, and to establish a new rate of 13 for 50 cents in connection with an existing rate of 6 for 25 cents, rather than to establish a rate of 26 tickets for \$1.

Return — Earnings — Construction of former order.

The Commission, in its decision in 10 Wis. R. C. R. 1, did not hold that it is untenable to consider the suburban system income accounts with the Milwaukee urban income accounts of the railway companies as a basis for rates of fare.

Street railway rates — Unreasonable order rescinded.

The order of the Commission made on August 23, 1912 (10 Wis. R. C. R. 1, 305), that the Milwaukee Electric Railway & Light Company and its allied companies discontinue a ticket rate of 25 for \$1, and substitute therefor a ticket rate of 13 for 50 cents, was rescinded as unreasonable, it appearing from an analysis of the capital account, operating expenses, and fixed charges that there was a failure of the companies to maintain the ordinary growth of their gross and net revenues during the last three years, due to causes wholly beyond their control, the net revenue resulting from the rates established by the Commission producing a return of 9.87 per cent in 1912, 7.29 per cent in 1913, and 5.45 per cent in 1914 upon the cost of reproduction new, based on the Commission's engineers' appraisal of the urban railway system, and a return of 2.16 per cent in 1912, 3.77 per cent in 1913, and 2.28 per cent in 1914 upon the cost of reproduction new of the suburban railway, and a return of 7.21 per cent in 1912, 6.14 per cent in 1913, and 4.47 per cent in 1914, on the cost of reproduction new of the combined urban and suburban systems, showing a considerably lower net return on the investment than the rates or costs at which it is well known that capital for similar undertakings can in the long run be had.

[January 30, 1915.]

PETITION for release from an order of the Commission requiring a street railway company to discontinue a ticket rate of 25 for \$1, and to sell through its conductors tickets in packages of 13 for 50 cents; granted.

Appearances: J. P. Beuscher for the petitioner; Daniel W.

Hoan and Clifton Williams for the city of Milwaukee; respondent companies by Edwin S. Mack of Miller, Mack & Fairchild, and by James D. Shaw of Van Dyke, Shaw, Muskat, & Van Dyke.

By the **Commission**: The petition in the above matter, filed on December 7, 1914, reads as follows:

The petition of Christ Woehsner respectfully shows:

1. That he is a resident of the city of Cudahy, Milwaukee county, Wisconsin, and is mayor of said city of Cudahy, Wisconsin.

2. That petitioner is a frequent passenger on the suburban electric railway, owned and operated by the Milwaukee Light, Heat, & Traction Company, duly organized and existing under the laws of the state of Wisconsin, conducting street and suburban railway business.

3. That petitioner is a frequent passenger on the Milwaukee Electric Railway & Light Company, a corporation duly organized and existing under and by virtue of the laws of the state of Wisconsin, conducting street railway business, and owns and operates nearly all of the street railway business in the city of Milwaukee.

4. That on the 23d day of August, 1912, an order was made by the Railroad Commission of Wisconsin, upon the application of the city of Milwaukee, ordering the Milwaukee Electric Railway & Light Company to sell 13 tickets for 50 cents and 26 tickets for \$1; that your petitioner is informed and verily believes that this order is unreasonable and unjust in that it deprives and prevents the Milwaukee Electric Railway & Light Company from getting a fair return upon its capital invested; that in the same order it was provided that the earnings of the suburban railway company should not be considered a part of the earnings of the city railway operated in the city of Milwaukee, and that your petitioner is informed and verily believes that this part of the order is unreasonable and unjust.

5. That on January 2, 1914, the railroad Commission of Wisconsin made an order authorizing the Milwaukee Light, Heat, & Traction Company to charge 2 cents per mile on its suburban and interurban railway business; that this order was,

upon application duly made, amended by the order of October 28, 1914, ordering the Milwaukee Light, Heat, & Traction Company to sell 30 zone tickets for 50 cents and making other amendments; that the original order of October 28, 1914, is on file with the Railroad Commission of Wisconsin, and petitioner refers to said order so on file; that petitioner believes that the order made on October 28, 1914, is reasonable and just.

6. That on the 5th day of December, 1914, the Milwaukee Light, Heat, & Traction Company brought an action in the circuit court in and for Dane county, Wisconsin, the title being: "The Milwaukee Light, Heat, & Traction Company, plaintiff, v. Railroad Commission of Wisconsin, defendant;" that in the complaint served upon said Railroad Commission of Wisconsin, plaintiff alleges that the order made on October 28, 1914, is unlawful and unreasonable, in that it does not provide for a fair and equitable return upon the capital invested by the plaintiff.

7. That your petitioner makes this petition for the purpose of asking that the order made on the 23d day of August, 1912, providing for the sale of 13 tickets for 50 cents and 26 tickets for \$1, be so modified as to provide that the earnings of the suburban railway system owned by the Milwaukee Light, Heat, & Traction Company shall be considered in connection with the earnings of the Milwaukee Electric Railway & Light Company, and that the order be so modified that the earnings of the suburban street railway and the city railway shall be combined and considered as a whole; that upon such earnings the Milwaukee Electric Railway & Light Company and the Milwaukee Light, Heat, & Traction Company have a fair and reasonable return, and for such other order and relief as the Commission may deem reasonable.

Counsel for the city of Milwaukee stated the objections to the petition in behalf of the city at the hearing held upon January 5, 1915. In substance, counsel stated that the complaint should be dismissed on the ground that under the railroad commission law an individual does not have the right to complain as to the amount of earnings which are made by a corporation under an order of the Commission; that the proper method to test the validity of these orders is through the right of appeal provided

in the statutes; and that if the method used in the instant case to change the orders of the Commission to be tolerated, there will never be such a thing as *res judicata*. Counsel also stated its position on the right of the respondent, Milwaukee Light, Heat, & Traction Company, to operate within the city limits of Milwaukee, holding that this company has no franchise to do business in the city.

The respondent company, the Milwaukee Electric Railway & Light Company, in its answer to the petition, states as follows:

Now comes the above-named respondent, the Milwaukee Electric Railway & Light Company, and answering the petition of said Christ Woehsner, respectfully shows:

1. Said respondent admits that said petitioner is mayor of the city of Cudahy and a resident of said city, and is frequently a passenger on the suburban electric railway system operated by the Milwaukee Light, Heat, & Traction Company, and on the street railway of the respondent, the Milwaukee Electric Railway & Light Company.

2. Said respondent admits that on August 23, 1912, the Railroad Commission of Wisconsin entered an order purporting to require the Milwaukee Electric Railway & Light Company to sell 13 tickets for 50 cents and 26 tickets for a dollar, which order, together with the decision on which it is based, are printed in the reports of decisions of said Railroad Commission. (10 Wis. R. C. R. 1 et seq.)

3. Said respondent further admits that said order is unreasonable and unjust in that it deprives and prevents said respondent from getting a fair return upon its capital invested, and joins in making such allegation.

4. Said respondent further admits that on January 2, 1914, the Railroad Commission of Wisconsin made an order providing for uniform rates of fare over the lines of the respondent and said Milwaukee Light, Heat, & Traction Company, which order is printed in the advance sheets of the decisions of said Railroad Commission (13 Wis. R. C. R. 475 et seq.).

5. Said respondent also admits that on October 28, 1914, said Railroad Commission entered an order purporting to modify said order of January 2, 1914; said respondent further alleges

that said order unjustly and improperly extends fare limits and reduces rates of fare of said respondent and said Milwaukee Light, Heat, & Traction Company.

6. Said respondent admits that on December 5, 1914, the Milwaukee Light, Heat, & Traction Company instituted an action in the circuit court of Dane county against the Railroad Commission of Wisconsin as defendant, in which action it is alleged, among other matters, that said order of October 28, 1914, does not provide a fair and equitable return upon the property of said Milwaukee Light, Heat, & Traction Company used and useful in its railway business, and in which suit, among other relief, it is prayed that said order entered October 28, 1914, be vacated and set aside; and said respondent further alleges that said order of October 28, 1914, is unreasonable, unlawful, and improper by reason, among other things, of being based on an undervaluation of the property of the respondent and said M. L. H. & T. Co., and by reason of improperly reducing the income and return of said respondent and said M. L. H. & T. Co., and also by reason of depriving said respondent of property without due process of law, denying said respondent the equal protection of the law, violating justice and fundamental principles, and being in violation of the Constitution of the United States and the Constitution of the state of Wisconsin.

7. Said respondent further denies each and every allegation of fact in said petition set forth and not herein otherwise admitted, qualified, or denied.

8. Said respondent further alleges that divers franchises granted to your respondent and its predecessors by the state of Wisconsin and the city of Milwaukee, and particularly a franchise embodying an ordinance adopted January 2, 1900, all of which were accepted by the grantees, and were and are being performed, constitute contracts under and by virtue of which your said respondent acquired and has the right to charge a cash fare of 5 cents to each and every passenger on its street railway system, and to sell commutation tickets, good for one fare each, in packages of 25 for \$1, or 6 for 25 cents and that said respondent could not and cannot be required to sell tickets at the rate of 13 for 50 cents or 26 for \$1, or at any less rate than

that of 25 for \$1 or 6 for 25 cents; and that copies of said franchises were offered in evidence before said Railroad Commission in said proceeding instituted by the City of Milwaukee v. The Milwaukee Electric Railway & Light Company, the decision in which was made August 23, 1912, as aforesaid, and which is printed in 10 Wis. R. C. R. page 1, and said respondent refers to said franchises, and particularly to said ordinance of January 2, 1900, and makes the same a part hereof as fully as if the same were herein set forth at length.

9. Said respondent further alleges that the return which said respondent for many years has earned and is now earning on its street railway system is less than five per cent (5 per cent) per annum, whether based on the proper investment therein or on the fair value of the property of the plaintiff used and useful in the conduct of its railway, and that the rate of return which would be earned by said respondent under the rates of fare existing prior to the entry of said order of August 23, 1912, at all times has been and would be less than six per cent (6 per cent) per annum, whether based on the investment in the street railway property of said respondent or on the fair value thereof; and that said order of August 23d, 1912, requires reductions in the fares which will diminish the revenues and return of the said respondent over \$170,000 per year.

10. Said respondent further alleges that the rates of fare provided for in said order of August 23d, 1912, and said order impair the obligation of the contracts belonging to said respondent, and deprive the respondent of property without due process of law, and deny to said respondent the equal protection of the law, and are in violation of justice and of fundamental principles, and are in violation of the Constitution of the United States, and in violation of the Constitution of the state of Wisconsin.

The respondent company, Milwaukee Light, Heat, & Traction Company, filed an answer which admits, denies, and alleges all matters set forth in paragraphs 1 to 7, inclusive, contained in the answer of the Milwaukee Electric Railway & Light Company, just cited. It further alleges that the return which it is now earning and has earned for many years on its railway system is less than 5 per cent per annum, whether based upon the

proper investment or the fair value of the property used and useful for railway purposes.

Hearing in the matter was held on January 5, 1915, in the city hall at Milwaukee. J. P. Beuscher appeared for the petitioner. Daniel W. Hoan and Clifton Williams represented the city of Milwaukee. The respondent companies were represented by Edwin S. Mack of Miller, Mack, & Fairchild, and by James D. Shaw of Van Dyke, Shaw, Muskat, & Van Dyke.

Before entering into the merits of this case, it appears necessary to modify certain statements which were made in the petition and repeated in the answers thereto. A reading of the foregoing instruments quoted conveys the impression that the order of August 23, 1912, referred to, intended to establish twenty-six tickets for \$1 as part of the rates of fare. We wish to quote the order before giving an interpretation.

"It is therefore ordered that the Milwaukee Electric Railway & Light Company shall discontinue the present ticket rate of 25 for \$1, and shall sell through its conductors tickets in packages of 13 for 50 cents, and each ticket shall entitle the bearer to one continuous passage in the same general direction, with privilege of usual transfers between the single-fare points upon the city lines of the respondent.

"Thirty days is deemed sufficient time to comply with the above order."

Milwaukee v. Milwaukee Electric R. & Light Co. 10 Wis. R. C. R. 1, 305.

Presumably the intent of this order was to abolish the 25 tickets for \$1, and establish the 13 for 50 cents ticket in connection with the 6 for 25 cents ticket then and now in existence. This interpretation was the basis for all computations pertaining to the probable effect of the order in the decision leading up to the order in question, and has also been made the basis of the computation given subsequently in this decision.

Another matter which merits attention pertains to the statement made in the petition that the decision of August 23, 1912, "provided that the earnings of the suburban railway company should not be considered a part of the earnings of the city railway operated in the city of Milwaukee, and that your pe-

itioner is informed and verily believes that this part of the order is unreasonable and unjust." From this statement included in paragraph 4, and a supplementary statement included in paragraph 7, of the petition, it is apparent that the intention is to establish the allegation that the decision of this Commission (10 Wis. R. C. R. 1, 305) deemed it untenable to consider the suburban system income accounts in connection with the Milwaukee urban income accounts as a basis for rates of fare. A re-reading of the essential parts of this decision and the suburban decisions issued in conjunction with it, upon the same date, leads us to believe that the allegation contained in the petition is not supported by the content of the text.

For instance, in discussing the feasibility of a $3\frac{1}{2}$ mile central zone within Milwaukee the decision (10 Wis. R. C. R. 299) says: "These facts are significant, and indicate that some stipulation is necessary to promote the movement of population to and from the city to these outlying districts."

In closing, on page 305, the following deduction is made in the opinion, due to an analysis of the entire situation within the city of Milwaukee: "From these and other facts it further appears to us that the extensions of the single-fare limit into West Allis, Wauwatosa, and to East Milwaukee, as provided in the other orders referred to, should be made."

However, the full meaning of the two short quotations from the city Three-Cent Fare Case, given above, is clearly defined in the suburban decision, *Cusick v. T. M. E. R. & L. Co.* 10 Wis. R. C. R. 314-336. As to the feasibility of extending the single-fare limits to West Allis, and reducing the rate of fare, the decision stated on pages 332, 333 is as follows:

"In determining the cost of service the operating expenses of both companies treated together and separately, and the operating expenses of the separate lines carrying traffic to and from West Allis, are all elements to be given due consideration, depending upon their relation to West Allis service.

"From an examination of net earnings by lines contained in the case *Milwaukee v. T. M. E. R. & L. Co.* (1912) 10 Wis. R. C. R. 1, and from a study of the traffic demands by lines contained in the report submitted by the engineer of the Commis-

sion, it appears that the service in question (suburban) is a continuation of city business, and more closely allied to urban rather than interurban traffic. City lines having suburban outlets are, as a rule, upon a better paying basis than city lines without such an outlet. Generally speaking, increased density of traffic in the suburbs is accompanied by increased density of traffic within the city. The number of persons riding upon the car, it appears, is closely related to the population per tributary quarter square mile; and just as increased density of population within the city means a related increase at the outskirts, so it appears that the demand for service within the city is proportionately increased by the demand for service at the suburbs. The suburban or second fare zone is undoubtedly entitled to share the benefits of the increased traffic it occasions upon city lines.

"The basis suggested by the company, and upon which it has submitted calculations of estimated net earnings, assumes that the traffic between first and second fare points shall be considered as a separate unit. It is difficult to see the justice of this assumption. No line is equally well paying upon each portion of the distance it covers, and it is manifestly unfair to expect the farthest extremity to be self-sustaining. It seems clear from the relative traffic contributed by the city and the West Allis suburbs that the net earnings obtained by a segregation of revenues and expenses of the first-to-second-fare-zone section are no definite criterion of the value of that traffic to the entire system of which the suburban outlet is a part.

"The limit of any extension must be measured by the paying haul per passenger and per car for the entire line and for the system as a whole. Few suburban extensions are paying at the start, and the reasonableness of making additions to the present trackage must be determined largely by the profitableness of urban traffic."

Particular emphasis in this decision is placed upon the fact that the city system should not only share the expense of the suburban service, but should share the greater proportion (p. 336):

"A consideration of all the factors affecting cost of service,

Geographical location, and traffic conditions leads to the conclusion that an extension of the single fare line to 62d avenue is reasonable and would yield both companies combined a fair return upon their investment. Such a change will necessitate an extension of 1.611 miles upon the Wells-Farwell line and 0.44 miles upon the Fond du Lac-National line.

"Upon the assumption that the companies are separate and distinct, the burden of the change in fares can be equitably prorated. By far the greater portion of the terminal expenses or the cost per passenger should be borne by the city company. Only that part of the movement or passenger mile costs occasioned upon traction company's property should be charged to the traction company. Such a basis of division would considerably lighten the burden now sustained by the traction company under the present car-hour basis of dividing costs."

In regard to the single fare extension to the suburb, Wauwatosa, the decision in the matter, *Koenig v. T. M. E. R. & L. Co.* 10 Wis. R. C. R. 337-351, states as follows: "These results indicate that, when the city business is considered, some extension of the single fare limits can be made and the company still be able to earn a reasonable return upon the investment. It is obvious, however, that the suburban business itself is not upon a paying basis, but that an extension must be largely determined on the basis of the paying haul of urban business, and that any reasonable extension cannot comprise the most populated portion of Wauwatosa."

Again, in making the extension to East Milwaukee, the Commission's holdings are in point. *East Milwaukee v. T. M. E. R. & L. Co.* 10 Wis. R. C. R. 358-369, 366, 369:

"The fact that under the company's present traffic conditions the suburban line, or that portion extending from the first to second fare points, is not upon a paying basis, is no indication that the traffic contributed by the East Milwaukee patrons is not a profitable addition to the entire Wells-Farwell system. As has been pointed out in that case, one of the elements properly considered in determining the limit of an extension of the single fare limit is the paying haul per passenger and per car."

"In case the proposed rate is continued as a joint rate between

the city and traction company, the burden of the expense of the latter can be materially reduced by a reapportionment of costs upon a more equitable basis."

Considering the intent of these quotations, it is hard to see where the allegation in the petition finds any support.

The service within the suburbs adjacent to Milwaukee is in most cases merely an extension of the city service. With few exceptions the same cars operating in the city render the service in the suburbs. There are no doubt instances when the suburban system earnings and expenses are given more or less weight, according to the nature of the case; but it is certain that seldom, if ever, can such earnings and expenses, when as closely connected with the city system activities as in Milwaukee, be considered an absolute criteria for the adjustment of fares or modification of service rendered. This is the doctrine which seems to have been established in the Three-Cent Case and the subsidiary cases; and was also considered in the Suburban and Interurban Fare Cases decided January 2, 1914 (13 Wis. R. C. R. 475), and in the amendment of this order on October 28, 1914.

In the testimony it was maintained that the interurban railways leading from the city, as well as the suburban system, should be considered in connection with a distribution of the profits of urban operation. The practicability of such a plan to include the interurban lines seems beset with difficulty. As a rule, no such intimate relation exists between the activities of interurban cities and the terminal city as between suburbs and their urban center. In this case, as in most cases, the high degree of dependency obtaining in the urban and suburban daily life cannot be attributed to urban and interurban conditions. It is obvious that the activities of rural communities, and even of the municipalities tributary to interurban lines, are not as dependent upon urban activities as the suburban.

The only remaining demand of the petition which requires attention in this decision pertains to the abolition of the tickets at 13 for 50 cents ordered to be sold by the respondent company, the Milwaukee Electric Railway & Light Company, on August 23, 1912. And the basis for such abolition cannot lie in any misinterpretation of the data submitted and considered in the

Fare Case (10 Wis. R. C. R. 1) inasmuch as the Commission still believes that under the existing conditions and the knowledge at hand up to December 31, 1911, the above rate was fair to the contending parties. Although the decision was issued in the eighth month of the year 1912, no definite nor comprehensive consideration was given to the operations of the respondent company during that year. The basis for abolition, then, must lie in the changes that have occurred since December 31, 1911, and their effect upon the future.

Physical Property. A number of factors have contributed to the changed conditions which exist at the present writing in the street railway business of the respondent city company. By far the most significant of these have been the additions to physical property. In the Three Cent Fare Case the Commission's engineers placed the cost of reproduction new for city railway as of January 1, 1910, at \$9,802,807, which was later adjusted, due to inclusions from nonoperating property, to the amount of \$139,318, bringing the corrected cost new on this date up to \$9,942,125. In computing the last year's income account of 1911, considered in the Three Cent Fare Case, the cost new as of January 1, 1911, \$10,514,201, was used as the basis for obtaining the per cent of returns. During the following three years from January 1, 1911, to January 1, 1914, the additions, including \$347,765, in adjustments, amounted to \$4,512,818, or an increase of over 43 per cent of the property existing on January 1, 1911. The additions during the four years ending January 1, 1915, foot up to \$4,691,843, resulting in a total cost new of \$15,206,044, or an increase 44.6 per cent over the property on January 1, 1911; taking the entire period from the date of the engineer's aggregate, \$5,403,237, or 54.3 per cent of the corrected appraisal of \$9,942,125. In round numbers it may be stated that the physical property used for railway purposes by the respondent in Milwaukee increased from approximately \$10,000,000 in 1910 to \$15,000,000 at the beginning of 1915, or a total addition amounting to 50 per cent of the 1910 property.

The relative importance of these increases in plant is properly emphasized when the investment ratios are taken into account.

In 1910 the revenues amounted to \$3,787,323, producing an investment ratio of 38.1 per cent. For 1911, the revenues of \$3,963,072 resulted in a slightly lower ratio of 37.7 per cent; while for 1914, with property at \$15,000,000 and revenues at a little above \$4,000,000, \$4,110,717, the ratio is 27.35 per cent, or a decrease of over 10 per cent. In other words, in 1911, there existed \$2.65 of property for every dollar of revenue, which increased to \$3.66 of property for every dollar of revenue in 1914. To place the year 1914 upon the same profitable basis as that of 1911, it is significant to show that the revenues should have totaled \$5,665,186, or a necessary increase in 1914 over 1911, assuming the same operating ratio, of \$1,702,114, or 43 per cent. This last figure, compared with the actual increase in revenues of 1914 over 1911, \$147,645, or 3.7 per cent, brings out the difference in conditions admirably. It may be contended that this comparison would be affected by the depressed business conditions during the latter half of 1914, but the maximum revenues collected by the company during its entire history occurred in 1913, and were only greater by \$110,592 than those of 1914.

Space will not permit a detailed analysis of the additions to property during the past four years as cited previously, but an enumeration of the principal expenditures which have taken place during this period will undoubtedly throw some light upon the situation. Extensions and additions to track totaled \$430,433. Of this amount \$62,373 was expended for 7.585 miles of crosstown lines; \$277,025 for 4.169 miles of extensions to existing lines; and \$91,035 for double tracking, etc., involving a little over 2.2 miles. By years these outlays amounted to \$156,615 for 1911; \$60,526 for 1912; \$210,435 for 1913; and \$2,857 for 1914. The additions under the head of "Buildings, Fixtures, and Grounds" occasioned during this period totaled \$444,797, which may be itemized as follows: Cold Spring shops, \$246,260; Fond du Lac avenue car station, \$132,265; addition to Commerce street power plant buildings, \$27,689; New Twentieth street substation, \$30,449; and the Cold Spring avenue stable and garage, \$8,134. For equipment in the various power plants and substations there was expended \$875,531. Commerce

street power plant equipment required \$708,092 of this total; Oneida street power plant, \$17,386; and the substations on Clinton street and 20th street required the balance of \$150,053. For rolling stock and equipment a total of \$466,540 was spent, divided up into \$385,561 for 60 new Pay-As-You-Enter cars and \$80,879 for 8 snow sweepers, 100 Hunter signs, 150 hot air heaters, and miscellaneous new equipment. Under the head of shop equipment approximately \$80,000 was spent upon the Cold Spring avenue shops. The list of capital charges enumerated up to this point does not include the expenditures for overhead distribution and transmission systems; for underground conduit, cable, etc., and for the numerous smaller additions to track, buildings, cars, power plant, shop, and utility equipment.

An important item, however, which should be mentioned in this connection as a cause for decreasing net earnings, is that of paving. Due to the city's recent requirement that the company pave the track zone the annual expenditures have become considerable. The expenditure for 1911 amounted to \$58,430; for 1912, \$91,611; for 1913, \$258,758; and for 1914, \$85,072; or a total for the four years of \$593,871. During this period the entire additions to property exclusive of paving amounted to \$1,097,972, which places the additions due to paving at 14.5 per cent, or over 1/7 of the total other additions.

Exclusive of paving, these additions to physical property have been due, among other things, to increasing demands for car and power plant capacity, especially during the rush hours; to the increased needs of a growing city in the form of line extensions; to the demand for more crosstown lines, and to the adoption of a better policy of maintenance, as exemplified in the construction of the Cold Spring avenue shops. When viewed from the standpoint of the income accounts these additions have not only caused a large increase in the amounts necessary for returns, but have also occasioned considerable advances in depreciation charges and outlays for taxes, insurance, and maintenance, which have made serious inroads upon the relatively static revenues. Allowing about 14 per cent to cover returns, depreciation, taxes, and insurance upon the additions for this period,

the deduction from the revenues amounts to \$658,000, or approximately $\frac{1}{4}$ of the entire revenues for 1914.

Maintenance. The factor of maintenance has, no doubt, changed the complexion of the income accounts to some extent. Maintenance at present requires higher relative charges than the charges prevailing during the period covered by the Three-Cent Fare Case. This is true, due to several reasons, namely; that there was an element of deferred maintenance from 1908 to 1911, inclusive, and that the new physical property installed since 1911 has caused additional maintenance to cover new property, and has caused the maintenance per unit to increase; and finally, that the nation-wide increases in prices of materials and wages have affected the urban transportation business very materially.

As to the matter of deferred maintenance an examination of the table given, for instance, on page 44, of the Service Case (13 Wis. R. C. R. 1), shows that the charges for maintenance of equipment per car mile ranged from 1.1371 cents to 1.5089 cents during the four years, 1908-1911. The maximum cost of 1.5089 cents occurred in 1910. A comparison with the next three figures of 1.9022 cents, 2.3568 cents, and 2.1455 cents for 1912 and 1913, supports the contention. After a careful analysis the Commission reached the conclusion that at least 1.8 cents per car mile would be required to keep the equipment in proper repair (13 Wis. R. C. R. 44-50). The respondent company in this proceeding contended for, and still contends for, 2.006 cents per car mile as an adequate allowance. Whatever the final cost per car mile necessary, it is certain to be from 5 cents to 7 cents per car mile higher than the average prevailing during the period 1908-1911, or an approximate addition to expenses of from \$70,000 to \$100,000. The high figures per car mile given above for 1912 and 1913 indicate in a measure what amounts above the average should have been properly charged to expenses during the years from 1908 to 1911, while the final average of 1.8 cents per car mile, or higher, indicates the amount of additional maintenance which will be required to cover the Pay-As-You-Enter mechanism, air brakes, sign and signal systems, etc., added to the old equipment.

Taking up the increases in maintenance due to other new property, there is no doubt that if no appreciable increases have appeared up to the present, these will certainly occur within several years when the newness of these additions has worn off. Such charges will be occasioned, for example, by the new power plant buildings, boiler, turbines, generators, converters, etc.; by new track and overhead of the extensions, crosstown lines and special work to meet demands for service; by the track added, due to single fare extensions ordered, and by new shop equipment. New paving will not only cause increased maintenance, but, due to changes in street grades and the removal of tracks, the company has been compelled to charge considerable amounts into maintenance because the depreciation reservations established were not sufficient to cover the premature removal of this property. These charges, due to public requirement, amounted to \$24,249 in 1914.

Operation. Certain increases in wages of labor, expense of supervision, and general overhead charges, have been due to larger power plant and repair shop capacity, to additional crosstown lines, to single fare extensions, to additional car house accommodations, and other developments. There have been deductions from the operating revenues due to these conditions enumerated, and also to change of company's policy and public requirement. As an example of the latter, the trend of trainmen's wages may be mentioned. The annual wage bill for these employees for the city and traction companies combined increased from \$896,886 in 1911, to \$1,062,804 in 1914. For the city company this charge amounted to \$795,600 in 1911, \$842,200 for 1912, \$893,100 for 1913, and \$949,100, for 1914. On a car hour basis the increase is shown for the same years as 49 cents, 49.8 cents, 51.5 cents, and 53.8 cents, respectively. A partial explanation of these increases may be attributed to the fact that in February of 1913 the company adopted the policy of a minimum wage, and a reduction in the spread of duty from sixteen hours to fourteen hours, in the interest of the welfare of its employees; to the fact that on June 12, an increase of 1 cent per hour was made in the wages of trainmen, and a similar increase was made on August 1, 1913, and to the fact that since

September, 1913, fare box collectors were placed at important intersections where heavy loading occurs during the rush hour periods. During 1914, an increase of \$83,400 took place over 1911, due to these conditions, of which about \$24,000 is traceable to the spread of duty and minimum wage policy, \$2,700 to collectors, and \$58,000 to wage increases.

Revenues. Under the discussion on physical property additions it was shown that the revenues have not kept pace with the relative increases in investment. Considering the status of the revenues without reference to any other phase of the financial operations of the city company, an analysis shows highly unfavorable conditions. The following table has been prepared to indicate the conditions since 1909, by exhibiting the total and percentage variations in revenues from year to year.

Analysis of Operating Revenues.
The Milwaukee Electric Railway & Light Company.
1909-1914.

Year.	Total Operating Revenues.	Difference over Amount.	Preceding Year. Per cent.
1909	\$3,466,685	\$243,505	7.6
1910	3,787,323	320,638	9.2
1911	3,963,072	175,749	4.7
1912	4,131,811	168,739	4.3
1913	4,221,311	89,500	2.2
1914	4,110,718	110,593 ¹	2.61

¹ Decrease.

Taking up the two three-year periods, namely, 1909-1911 and 1912-14, a comparative analysis will bring out the fact that there has been an appreciable decrease in the increase of revenues, both in absolute amounts and percentages. A total of the annual increases for the first three-year period from 1909 to 1911, inclusive, amounts to \$739,892, producing an annual average increase of \$246,631. The total increases for the later three-year period foot up to \$147,646, with an annual average of \$49,215. The decrease in the total increases for the two periods equals \$592,246, with a decrease in the annual average increase of \$197,416, or 80 per cent. On the basis of the percentage increases year by year, as shown in the table, the first three-year period shows a total of 21.5 per cent, and an

annual average increase of approximately 7.2 per cent, while in the second period the total per cent is 3.9, with an annual increase of 1.3 per cent, or a decrease in the annual per cent of increase by 5.9 per cent. These figures are important in that the average annual percentage increase from 1897 to 1911, inclusive, is approximately 7.5 per cent, emphasizing that the first three-year period is representative of the entire history of the trend in revenues up to 1912, while the last three-year period shows a decided change. In fact, taking the increases for the four years 1911 to 1914, a glance at the entire history of the company's revenues since 1897 does not disclose a similar period of protracted low increases. The only four-year period approaching such a condition is that from 1905 to 1908, inclusive, when, due to the unlimited hours of use given the 1900 franchise rates, and due to the depression during 1908, the average annual increase reached \$131,385, as compared with the 1911-1914 average annual increase of \$80,874. This seems to indicate that since the close of 1910, a new epoch, never experienced before, has begun, and that in view of the foregoing analyses, together with the subsequent discussion on this subject, the unfavorable condition can by no means be held to be temporary.

Before entering upon the causes which have brought about such conditions in annual receipts, it is considered essential to make a brief statement regarding the operating ratio. For the first year's detailed income account included in the Fare Case, namely, 1908, the percentage of operating expenses, taxes, and depreciation to revenues was approximately 65 per cent. In 1913 this ratio had reached 75 per cent, and in 1914, 78 per cent. Viewed in another way, the relative increase in expenses has been greater than the relative increase in revenues by about 13 per cent within the last seven years. There seems to be no indication, when the intermediate years are considered, that the revenues can overcome, within the next few years, this difference, and establish the lower ratios again.

There are numerous causes, both tangible and intangible, which have contributed and are at present contributing to this relative and direct recession in revenues. Some of the relative developments have been covered previously, and it will be the

purpose in the remaining discussion of this subject to enumerate and explain certain of the causes contributing to the more direct recession.

The rides *per capita* increased from 100 in 1897 to 250 in 1913. Recent indications point to the tendency that the present growth in rides *per capita* are not keeping pace with their former growth nor with the population curve. Expressing this development in another way, we find that the revenues *per capita* increased from \$5.39 in 1897, to \$10.43 in 1913. The same tendency, just stated, is, of course, true with the *per capita* earnings, modified to some extent by the decrease in average fare. Taking the situation as represented by these unit figures for the last few years as a whole, the solution seems to be that the riding habit is approaching a more complete saturation than ever before in the company's history of eighteen years. By this it is not meant that there will be no increase in the riding habit, but rather that the increase, if any, will be relatively slower than in previous years.

Another fact which has caused a direct decline in the increase of revenues may be found in the decreasing average fare, or revenues per revenue passenger. Up to 1900 the fare was 5 cents each. In this year a franchise was accepted by the company stipulating that ticket fares at 6 for 25c. and 25 for \$1, good from 5:30 to 8 A. M. and from 5 to 7 P. M. should be sold in conjunction with the cash fare of 5 cents. About 1905, these tickets, through another franchise, were made valid at all hours. The result has been that the number of passengers using cash fares decreased from 100 per cent prior to 1900, to 83.6 per cent in that year, and to 27.67 per cent when the tickets were sold unlimited in 1905. From the latter per cent there has been a gradual decrease in this class of fares down to 15.68 per cent in 1914. In round numbers the cash fare passengers dropped from 84 per cent of the total revenue passengers in 1900 to 16 per cent in 1914; or, stating the same phenomena reciprocally, the ticket passengers increased from 16 per cent in 1900 to 84 per cent in 1914. The effect of this upon the average fare is shown in that it has reached as low as 4.2 cents for 1914, whereas, prior to 1900, it was approximately 5 cents. Proportionate-

ly, the revenues have decreased year by year, and although these reductions have occurred in the earlier periods, they have, however, not been of such relative importance for two reasons: First, that as the number of revenue passengers has grown larger, the reductions have also increased. For instance, in the earlier years when the company carried about 30,000,000 revenue passengers per annum, the total reduction caused by a 4-cent fare in place of a 5-cent fare would have been in the neighborhood of \$300,000, while at present, when the revenue passengers carried amount to 100,000,000, the reduction is about \$1,000,000. Viewing the situation from the standpoint of totals, the company would be collecting \$5,000,000 at present instead of approximately \$4,000,000. Secondly, the reductions due to this constant increase in ticket passengers makes itself felt all the more at present because it is coupled with the other causes here enumerated affecting revenues adversely.

Another important cause which has prevented the normal increase in revenues established up to 1911 is the extended use of transfers. This is another factor which has operated upon the revenues throughout the entire history since 1897, but whose relative effect has become greater in recent years. The per cent of revenue passengers using transfers increased from 25.52 in 1897, to 36.94 in 1913, and within the last year the unprecedented rise took place in this ratio of 2.72 per cent, bringing the total for 1914 up to 39.66 per cent.

The revenue passengers decreased from 100,073,659 in 1913 to 97,874,919 in 1914, or a difference of 2,108,740, while the transfer passengers increased from 37,402,570 in 1913 to 39,263,919 in 1914, or a difference of 1,861,349. The most important causes for an increase in the transfer ratio within the last year, and since 1911, were the installation of crosstown lines and extended transfer privileges. The following crosstown lines have been established since 1911:

Line.	Opened.
12th st.—16 st. viaduct	June 3, 1911.
8th st.—16 st. viaduct	December 16, 1911.
27th st.—North ave. to Fond du Lac ave.	December 16, 1911.
27th st.—National ave. to Burleigh	October 21, 1913.
P. U. R.—19.	

A conservative estimate of the annual loss occasioned by the use of these privileges has been placed in the neighborhood of \$80,000 for 1914 alone.

Among the causes of more recent origin which are affecting revenues adversely in Milwaukee may be mentioned automobiles, cycle cars, and motor cycles. Estimates of the depressing effect of this vehicle traffic upon urban transportation revenues have been made within the past year for several cities in the United States, and the results have been substantial decreases. No check on this traffic has been made in Milwaukee as far as we know, but an idea of what the probable effects are may be placed upon the basis of the total machines owned in the city. The state license reports show that 8,602 machines were owned in Milwaukee county last year, of which about seven eighths are estimated to be owned in the city. Taking the number of machines in use there at 8,000, it may be estimated that on the basis of two passengers per day for 365 days, the reduction in revenues on all urban lines would approximate \$245,000 per annum at the average of 4.2 cents for 1914. Assuming only one passenger per day, the reduction would total \$122,500 per annum. In consideration of these figures and those for other cities there is sufficient ground to hold that an estimable percentage of the decrease in revenues of the city company may be attributed to this traffic.

Another and more tangible cause in this connection is the order of the Commission here in question. The 13 for 50 cents tickets have been sold since September 23, 1913, at 12 for 50 cents, with a redemption coupon attached by order of the circuit court of Dane county to represent the thirteenth ticket. The entire matter is now pending in the United States Supreme Court. These tickets have, therefore, not been sold under the full effect of the order, and an estimate is necessary as to the probable annual reduction. In the Fare Case, this reduction was estimated at \$171,784 for 1911 (10 Wis. R. C. R. 247). The basis used here was a reduction of .1538 of a cent per passenger for the 25 for \$1 class and .3205 of a cent per passenger for the six-for-a-quarter class. As the order discontinued the 25

for \$1 tickets, the entire 28,129,581 passengers of this class were estimated to purchase the new ticket, while about 40,000,000 of the 47,095,515 six-for-a-quarter passengers were estimated to purchase it. In the light of the actual sales of these tickets since September 23, 1912, amounting to a reduction of \$24,278.97 for the few months in 1912; to \$81,915.87 and \$77,354.48 for the years 1913 and 1914, respectively, it seems that the estimate in the Fare Case expresses the final maximum reduction which these tickets would incur, and not the figure that would apply within the next few years. Although the actual total reduction of \$183,549.32, taking place under the coupon sales for the period of two years and three months up to January 1, 1915, is not to be considered an absolute criterion, it nevertheless has enough influence to lead us to believe that a more conservative estimate would range from \$130,000 to \$140,000. The probable full effect of these tickets would tend, therefore, to have reduced the revenues for 1912, by an additional amount of \$116,000, and those for 1913 and 1914 by additional amounts of about \$58,000 and \$63,000, respectively, when \$140,000 is used for the total reduction.

Finally, the general trend of industrial and financial conditions has been such as to materially increase the prices of material, labor, and capital, and to in many ways considerably alter economic conditions. During the past eighteen years, for instance, prices on commodities generally appear to have increased not far from 50 per cent, while labor in practically all lines also commands much higher prices. The increase in the latter case, however, seems to be somewhat less than in the former, and to the extent to which this is true real wages or the purchasing power of the workers has diminished. Conditions of this nature affect the cost of furnishing utility service, as well as the power to utilize the same. Such conditions are also of far-reaching importance, and cannot be safely disregarded in such cases as the one before us.

The marked decrease in the annual increase of revenues since 1911, as analyzed previously, may certainly be partly attributed to the status of real wages. The years 1912, 1913, and 1914

have fallen far short of producing a normal increase in revenues. Assuming a normal increase of only 5 per cent for the later years, 1913, for instance, has failed to reach this required quota by approximately \$35,000, when excluding the redemption fund as a factor, while 1914, on this basis, shows a shortage of \$224,000.

With an analysis of the history of the city company's revenues as outlined in the preceding paragraphs, the conclusion must be reached that no encouragement can be found here that the revenues can, for a considerable time to come, recoup their own losses due to both permanent and temporary causes, and also make up the relative difference which now exists in the investment and operating ratios due to the large additions to physical property, with the attendant outlays to the increased costs in maintenance charges, and operation, and to the constantly increasing demands upon the revenues on account of public requirement.

Income Accounts. To reflect the entire financial conditions discussed in the foregoing analyses income accounts have been prepared for the calendar years 1912, 1913, and 1914. Part of the expenses in these statements have been subjected to apportionment, while others have been accepted as per the respondents' books. Some minor modifications in the allowances made for certain reserve accounts, including taxes, injuries, and damages, depreciation and other reserves, and deductions for excesses in the railway special accounts, have not been considered necessary for the purposes of this decision. The cost of reproduction new given in the table is based upon the engineer's appraisal of January 1, 1910 (10 Wis. R. C. R. 113, 114), with annual additions (excluding bond discount) and reported property adjustments. No allowances have been made for working capital, or going value, as it has not been deemed essential for the general conclusions reached in this decision to determine a final value on the basis of the depreciated cost new, depreciation reserve, liability, and the allowances mentioned. The income statements for the city and traction company separately and combined follow:

SUMMARY INCOME ACCOUNTS.

THE MILWAUKEE LIGHT, HEAT, & TRACTION COMPANY.

THE MILWAUKEE LIGHT, HEAT, & TRACTION COMPANY.

Calendar Years 1912, 1913, and 1914.

The Milwaukee Electric Railway & Light Company.			
Operating revenues	\$4,131,811.34 ¹	\$4,221,310.50 ³	\$4,110,717.78 ³
Total expenses	2,930,170.80	33,239,658.18	3,291,013.02
Surplus available for returns..	1,201,640.54	981,652.32	819,704.76
Cost of reproduction new as of January 1st	12,171,369.00	13,463,859.00	15,027,019.00
Per cent return upon cost of reproduction new as of Janu- ary 1st	9.87	7.29	5.45

Milwaukee Light, Heat, & Traction Company.			
Operating revenues	\$923,383.43	\$1,074,521.97 ¹	\$1,041,258.59 ²
Total expenses	784,768.14	828,290.00	887,200.39
Surplus available for returns..	138,615.29	246,231.94	154,058.20
Cost of reproduction new as of January 1st	6,422,007.00	6,521,337.00	6,765,329.00
Per cent return upon cost of reproduction new as of Janu- ary 1st	2.16	3.77	2.28

The Milwaukee Electric Railway & Light Company, Milwaukee Light, Heat, & Traction Company combined.

Operating revenue	\$5,055,194.77	\$5,295,832.47	\$5,151,976.37
Total expenses	3,714,938.94	4,067,948.21	4,178,213.41
Surplus available for returns..	1,340,255.83	1,227,884.26	973,762.96
Cost of reproduction new as of January 1st	18,593,376.00	19,995,196.00	21,792,348.00
Per cent return upon cost of reproduction new as of Janu- ary 1st	7.21	6.14	4.47

¹ Includes \$99,641.31 rental for M. L. H. & T. Co. track used by T. M. E. R. & L. Co.; and a small amount for track rented from the city of Milwaukee.

² Includes \$100,199.28 rental for M. L. H. & T. Co. track used by T. M. E. R. & L. Co.; and a small amount for track rented from the city of Milwaukee.

³ Excluding \$24,278.97, \$81,915.87, and \$77,354.48 amounts in the redemption reserve fund for 1912, 1913, and 1914, respectively.

It will be noted that in the preceding table, the per cent returns upon the cost of reproduction new as of January 1st is 9.87, 7.29, and 5.45 for the city company during the years 1912, 1913, and 1914, respectively. For the traction company, the

returns for these years are 2.16, 3.77, 2.28. When taking the two companies combined, the per cent return is 7.21, 6.14, and 4.47 for the same years.

The city company's income account, as shown in the above table, does not reflect the actual condition of the finances. As stated previously, the amount of revenues deducted on the basis of the coupon redemption reserve fund have not equaled the probable reduction in revenues when the 13 for 50 cents tickets will be sold as originally ordered. To place the income account for the three years subject to the estimated effect would require a deduction of \$116,000 in 1912, \$58,000 in 1913, and \$63,000 in 1914, resulting in a per cent return on the cost new given in the previous table for these years of 8.92, 6.86, and 4.79. The condition of the income account as analyzed up to this point does not make any allowance for additional service improvement. Although an improvement in the street railway service in the city of Milwaukee has taken place, there is still a considerable amount of money necessary to place the standard of service upon a more satisfactory basis, allowing sufficient cars during the non-rush, rush, and transitory periods to facilitate the transportation of passengers. It has been estimated that an additional amount for this improvement in the service will no doubt aggregate approximately \$100,000. When this allowance is incorporated in the income account, together with an allowance for reduction in revenues on the basis of the full effect of 13 for 50 cents tickets, the per cent returns for the year 1912 are reduced to 8.10, for 1913 to 6.12, and for 1914 to 3.7.

Another burden which falls upon the city company income account, and which has been discussed fully in the forepart of this decision, is the deficits occurring in the suburban territory adjacent to the Milwaukee city system. In the Fare Case, it has been shown that this system earned an average of about 1 per cent on the cost new during the period 1908 to 1911, inclusive. The conditions during the period 1912 to 1914 do not indicate that the suburban lines are in a more favorable condition, but also are approximately meeting the ordinary operating expenses, taxes, and depreciation. It therefore falls upon the city system income account to produce sufficient net earnings so as to pro-

vide something like fair returns upon the suburban plant values. When these plant values are included in the income account of the city company, together with the allowance made above for the additional reduction due to the 13 for 50 cents tickets and for service requirements, the per cent returns foot up to 7.38 in 1912, 5.61 in 1913, and 3.48 in 1914. Although these per cent returns are not final, any adjustments that can possibly be made will not prevent the conclusion that during the last two calendar years the revenues have not been sufficient to cover all legitimate demands for the adequate transportation of passengers in the city of Milwaukee and the adjacent suburban territory.

Exhibits were introduced by the respondent companies containing income accounts basing the per cent returns upon an alleged cash investment, upon a computed Railroad Commission's earning value, and upon the assessment value used by the Wisconsin Tax Commission. The cash investment value for the city company is obtained by taking the cash investment, \$8,885,644.47, placed upon the property as of January 1, 1897, in the decision, *Milwaukee Electric R. & Light Co. v. Milwaukee*, 87 Fed. 577, 584, by adding the additions up to January 1, 1910, as accepted by this Commission in the Three-cent Fare Case, and by adding the annual additions, excluding bond discount, as per books for the remaining years. The earning value for the city company has been obtained by accepting the earning value as of January, 1910, \$10,300,000, placed upon the property in the Three-cent Fare Case, and adding thereto the annual additions, excluding bond discount, as per books with adjustments, and allowing for the differences in accrued depreciation and property replacements. The Tax Commission value requires no explanation. The cash investment for the traction company is based upon this Commission's findings in its decision (10 Wis. R. C. R. 314, 326), plus the additions recorded in the books, excluding bond discount. The earning value for this company is obtained upon the same basis as that given for the city company. Although the values included in these income accounts can hardly be accepted by this Commission in their entirety, nevertheless, these income accounts, which represent the respondents' points of view, contain certain merits which warrant a summary repre-

sensation in this decision. The summary of the values and returns of these income accounts follow:

Summary of the Milwaukee Electric Railway & Light Company Income
Accounts, 1912-1914.
Respondent's Bases.

	1912	1913 ¹	1914
Cash investment	\$16,563,559	\$17,508,284	\$19,246,548
Per cent return	6.377	5.906	3.634
Commission's earning value	12,502,836	13,862,874	15,441,000
Per cent return	8.448	7.460	4.530
Tax Commission's value	18,191,000	18,700,000	20,235,104
Per cent return	5.806	5.530	3.457

¹ Fiscal year ending June 30th.

Note: Values under 1912 and 1913, as of January 1st. Values under 1914, as of June 30th.

Summary of Milwaukee Light, Heat, & Traction Company Income Accounts,
1912-1914.
Respondent's Bases.

	1912	1913 ²	1914 ²
Cash investment	\$7,781,305	\$7,890,635	\$8,124,627
Per cent return	2.800	2.907	3.739
Commission's earning value	6,184,929	6,195,208	6,274,889
Per cent return	3.523	3.702	4.841
Tax Commission's value	5,780,000	6,900,000	7,084,000
Per cent return	3.769	3.324	4.289

² Year ending June 30th.

Note: Values as of January 1st.

Conclusion. The increases in the operating expenses and fixed charges of the respondent companies and the failure of their gross and net revenues to maintain their ordinary annual growth during the past few years, that have thus been described, are due to causes that are wholly beyond the control of the respondent companies. These changes, however, as the facts herein clearly show, have resulted in this, that the net earnings of the respondent now are and for some time have been considerably lower on the investment than the rates or costs at which it is well known new capital for similar undertakings can in the long run be had. The conditions in this respect are also considerably aggravated by the fact that in this case, as in nearly

all large and growing cities, there is a constantly growing demand for improvements in, and extensions to, the local street railway service. The tendencies and changes in the expenses and earnings in question were seen when the order complained of herein was made; but it was not then thought that they were permanent, but rather temporary in their nature. Had the nature of these changes then been better understood, it is very certain that the order in question would not have been made. Justice and the law demands that the rates charged by public utilities for the services they render shall be reasonable to the utilities as well as to their patrons. The best interest of the greatest number in matters of this kind can, as a rule, be best promoted by allowing rates that are high enough to cover the cost of reasonably adequate service. As the rates provided by the order complained of fall short of this, we are, in fairness to the petitioner and in the interest of its patrons, compelled to find that this order is unreasonable, and that it should be repealed or abrogated.

It is therefore ordered that the order of this Commission on August 23, 1912 (10 Wis. R. C. R. 1, 305), to the Milwaukee Electric Railway & Light Company, discontinuing the ticket rate of 25 for \$1, and substituting therefor a ticket rate of 13 for 50 cents, is hereby rescinded.

Railroad Commission of Wisconsin, by John H. Roemer and Halford Erickson, Commissioners.

Note.—In this case the Commission calls attention to the fact that it was maintained in the testimony that the interurban railways leading from the city, as well as the suburban system, should be considered in connection with a distribution of the profits of urban operation. This issue was not specifically raised by the petition, so the Commission apparently only touches upon it in passing. The Commission says: "The practicability of such a plan to include the interurban lines seems beset with difficulty. As a rule, no such intimate relation exists between the activities of interurban cities and the terminal city as between suburbs and their urban center. In this case, as in most cases, the high degree of dependency obtaining in the urban and suburban daily life cannot be attributed to urban and interurban conditions. It is obvious that the activities of rural communities, and even of the municipalities tributary to

interurban lines, are not as dependent upon urban activities as the suburban." It seems obvious, therefore, that the interpretation of the decision in 10 Wis. R. C. R. 1, 305, is limited to the question of considering suburban and urban systems' income accounts together, and cannot be extended to include suburban system income accounts.

For a full discussion of the question of "returns to which public service corporations are entitled," see note to *Bellamy v. Missouri & N. A. R. Co.* L.R.A.1915A, 1, in which the difference in the nature of questions before the courts and commissions as to what constitutes confiscatory return and reasonable return is pointed out, and the elements to be considered in determining such questions are fully discussed.

WISCONSIN RAILROAD COMMISSION.

PLATTEVILLE, REWEY, & ELLENBORO TELEPHONE
COMPANY

v.

LANCASTER ELECTRIC LIGHT COMPANY.

FARMERS' TELEPHONE COMPANY

v.

LANCASTER ELECTRIC LIGHT COMPANY.

Jurisdiction — Relocation of telephone lines.

The Commission is without jurisdiction to require the relocation of telephone lines, although it appears that in order to secure adequate telephone service in conformity with rule 1 of the Standards for Telephone Service, August 13, 1914 (15 Wis. R. C. R. 1), it is necessary that such telephone lines paralleling respondent's subsequently constructed transmission lines be moved to the opposite side of the highway and made full metallic circuits, and that special precautions be taken at all points where the transmission lines cross the telephone lines.

[January 26, 1915.]

PETITION for relief from interference with telephone service due to proximity of transmission lines; dismissed.

Appearances: A. W. Kopp, of Kopp & Brunckhorst, for the Platteville, Rewey, & Ellenboro Telephone Company; Anton Vogt

and J. A. Jamison for the Farmers' Telephone Company; George Angus and E. A. Philips for the Lancaster Electric Light Company.

By the **Commission**: The petition of the Platteville, Rewey, & Ellenboro Telephone Company alleges in substance that during the summer of 1914 the Lancaster Electric Light Company constructed a high-tension transmission line along the public highway from Platteville to Lancaster, in close proximity to petitioner's telephone lines, without right or authority; that petitioner has occupied said highway with its telephone lines for more than twenty years; that the character of construction and operation of respondent's transmission lines is such as to render the telephone service rendered by the petitioner inadequate, and to endanger the patrons and employees of petitioner. The Commission is therefore asked to take such action as it deems just in the premises.

The petition of the Farmers' Telephone Company of Beetown alleges that the respondent has constructed high-tension transmission lines from Lancaster to Fennimore and from Lancaster to Platteville, parallel to petitioner's telephone lines, and that the operation of said transmission lines interferes with the furnishing of proper telephone service, and causes damage to petitioner. The Commission is asked to take such action as it deems proper in the premises.

Answering the petition of the Platteville, Rewey, & Ellenboro Telephone Company, the Lancaster Electric Light Company alleges that it has constructed, and is now maintaining, a transmission line from Platteville to Lancaster for the transmission of electric energy from Platteville to Lancaster for the use of the Lancaster Electric Company in supplying its customers; that said transmission line was constructed, and is maintained, under the permission and authority of the township commissioners of each of the townships through which it passes in accordance with law; that said transmission line is properly constructed and maintained; that petitioner's telephone lines are constructed of iron wire and grounded circuits, and are in poor physical condition; that any inefficiency in petitioner's telephone serv-

ice is largely the result of the condition of its lines. Respondent therefore asks that the petition be dismissed.

No formal answer to the complaint of the Farmers' Telephone Company of Beetown was filed.

A hearing, at which both complaints were considered, was held at Platteville on December 5, 1914. Kopp & Brunckhorst, by A. W. Kopp, appeared for the Platteville, Rewey, & Ellenboro Telephone Company, Anton Vogt and J. A. Jamison for the Farmers' Telephone Company, and George Angus and E. A. Philips for the Lancaster Electric Light Company.

The testimony shows that the Platteville, Rewey, & Ellenboro Telephone Company maintains grounded lines along the Lancaster-Platteville highway, from its central office at Platteville to Ellenboro, and thence to Lancaster. The highway has been occupied for this purpose approximately eighteen years. The opposite side of the highway is occupied by the metallic lines of the Wisconsin Telephone Company. The highway between Ellenboro and Lancaster and between Lancaster and Fennimore is occupied by the telephone lines of the Farmers' Telephone Company of Beetown, all but one of which are grounded circuits.

Respondent has constructed power transmission lines from Platteville to Lancaster, and from Lancaster to Fennimore, for the most part on the side of the highway occupied by petitioners, which are used for the transmission of electric current generated by the Interstate Light & Power Company at Galena, Illinois, for the use of the Lancaster Electric Light Company. These lines were placed in operation on October 10, 1914, and carry a voltage of 33,000. A witness for the respondent stated that the construction and operation of the transmission lines have been permitted and authorized by the proper municipal authorities, but no documentary evidence of such authority was introduced.

Patrons of both petitioning telephone companies testified that, prior to the operation of respondent's transmission lines, the telephone service rendered by petitioners was entirely satisfactory, but that subsequent thereto it has been poor. The chief cause of complaint is a loud buzzing noise which seriously interferes with the transmission of messages, especially with long-distance calls. It was stated that communication on the lines

affected is practically impossible at present. Witnesses asserted that patrons and employees are endangered by the close proximity of the high voltage lines to the telephone lines, and that the fear of such danger is demoralizing to its service.

A lineman in the employ of the Platteville, Rewey, & Ellenboro Telephone Company testified that, to provide adequate and safe telephone service, it will be necessary to make all of the lines metallic, and to move them to the side of the highway opposite the transmission lines. Our engineer, after an inspection of the properties, reports that in order to secure adequate service in conformity with rule 1 of the Standards for Telephone Service established in our order of August 13, 1914, 15 Wis. R. C. R. 1, it is necessary that the lines of the petitioners which now parallel respondent's transmission lines be moved to the opposite side of the highway, and made full metallic circuits, and that special precautions be taken at all points where it is necessary for the transmission lines to cross the telephone lines.

For the reason stated in the case of the Ebenezer Teleph. Co. v. Milwaukee Light, Heat & Traction Co. herewith decided ante, 174, the petition herein will be dismissed for want of jurisdiction on the part of the Commission.

Now therefore it is ordered that the petition be, and same is hereby, dismissed.

Railroad Commission of Wisconsin, by John H. Roemer, David Harlowe, Commissioners.

Note.—See Ebenezer Teleph. Co. v. Milwaukee Light, Heat & Traction Co. January 26, 1915, ante, 174.

INDIANA PUBLIC SERVICE COMMISSION.

IN RE APPLICATION OF KOKOMO WATERWORKS COMPANY.

[Case No. 1222.]

Service — Periods of rendering bills.

A rule of a water company that bills for water furnished through meters to domestic consumers in residences shall be rendered quarterly, instead of monthly, was approved.

Service — Payment.

A rule of a water company that bills for water furnished through meters to domestic consumers in residences shall be due at the office of the company on the first day of each quarter for the previous three months, and paid within ten days thereafter, was approved.

[February 2, 1915.]

APPLICATION for the approval of certain rates and rules governing the payment thereof; granted.

By the **Commission**: The Commission having under consideration the application of the Kokomo Waterworks Company for the approval of additional rules and rates, which application was filed with the Commission on the 28th day of December, 1914, finds that said rules and rates are reasonable, and that the rates are in addition to any rates heretofore enforced by said company or on file with this Commission as part of its schedule of rates, and that same ought now to be approved.

It is therefore ordered by the Public Service Commission, that the rules and regulations and rates so filed and which are as follows, to wit:

After December 31, 1914, bills of the Kokomo Waterworks Company for water furnished through meters to domestic consumers in residences will be rendered quarterly, instead of monthly. Such bills will be due at the office of the water company on the 1st day of January, April, July, and October, for the previous three months, and are to be paid within ten days thereafter.

On and after January 1, 1915, the following rates affecting certain public consumers will be adopted and put into effect by the Kokomo Waterworks Company:

Schedule of Rates Governing the Use of Water by the City of Kokomo,
Howard County, for Purposes Other Than Public Fire Hydrants.

First 100,000 gallons of water or less	10¢ per thousand
Next 900,000 gallons of water or less	8¢ per thousand
Next 1,000,000 gallons of water or less	7¢ per thousand
All over 2,000,000 gallons of water	6¢ per thousand

Meters to be read and bills to be rendered quarterly.

Schedule of Rates Governing the Use of Water by Churches, Public and Parochial Schools, Public Hospitals, and Charitable and Benevolent Institutions not Conducted for Profit.

Water to be furnished by meter measurement at 6¢ per thousand gallons.
Meters to be read and bills to be rendered quarterly.

—be, and the same are hereby, approved and made effective this date, to wit, the 2d day of February, 1915.

KANSAS PUBLIC UTILITIES COMMISSION.

FARMERS MUTUAL TELEPHONE COMPANY OF ROME,
KANSAS,

v.

CHICAGO, ROCK ISLAND, & PACIFIC RAILWAY
COMPANY.

[No. 787.]

Service — Maintenance of telephone in depots — Statutory requirements.

A railroad company will not be allowed, under a mandatory statute requiring reasonably adequate telephone connections between its buildings and the local public telephone exchanges, to discontinue at its depot the telephone service of one company because it is a subscriber of another, where it appears that both telephone companies are serving a large number of subscribers, very few of whom are users of the service of both companies.

[January 22, 1915.]

PROCEEDING to compel re-establishment and maintenance of a telephone in the depot of a railroad company; order requiring reinstallation and maintenance; granted.

Appearances: J. H. Finney, counsel for complainant; L. L. Collins, counsel for respondent.

OPINION.

Kinkel, Commissioner: The complainant alleges, in a general way, that it "maintains an exchange and switchboard in the city of Wellington, a city of about seven thousand inhabitants; that respondent operates its line of railway through said city, and maintains a freight and passenger depot therein; that said railway company has, since about September 1, 1912, used the service of said telephone company in its depot," and prays that an order be made "requiring said railway company to keep and maintain said telephone in its said depot."

The general answer of the respondent to the complaint in question is to the effect that "it is thought by this company that the public service will not be benefited by further maintenance of this phone in the depot at Wellington, and that the phone

should be discontinued as a matter of economy, there being an average of less than ten calls over same per month."

The vital portion of the testimony in this case seems to the Commission to be the fact that the complainant company maintains and operates a central exchange office in the city of Wellington, Kansas; that it has attached on its switchboard in this exchange and is furnishing service to three hundred and forty subscribers, about one hundred and seventy-five of whom are farmers living in the vicinity of Wellington, the remainder of the number being residents of said city. In addition to that, the complainant company furnishes switching service to a number of other exchanges in the county in which Wellington is located, thereby making it possible for the subscribers of such exchanges to obtain service through the complainant's exchange at Wellington, which practically makes the exchange at Wellington a vehicle through which several thousand people could, if they so desired, communicate with the employees of the respondent at its depot in Wellington.

The testimony of the respondent company is largely to the effect that it has no use for the service in question on account of the fact that it is a subscriber to the exchange of the Missouri & Kansas Telephone Company, which is maintained and operated in the same city.

Section 1, chapter 136, Laws of 1911, provides: "That every railway company, express company, and telegraph company doing business in this state shall furnish reasonably adequate telephone connections between its offices, buildings, and grounds, and the public telephone exchanges operated in the towns where the same are located."

The 2d section of this same act provides that this Commission is "authorized and empowered to require and compel the furnishing of such service."

It is to be noted that the section of the act above quoted is imperative in so far that the respondent in this case "shall furnish reasonably adequate telephone connections between its offices, buildings, and grounds, and the public telephone exchanges operated in the towns where the same are located."

It is clearly shown that both of the telephone companies operat-

ing in Wellington are serving a large number of people very few of whom are users of both companies' service. It therefore follows that each of the telephone companies in question is furnishing service to a large number of people who would not be enabled to enjoy telephone service with the respondent company's depot, unless the said company maintained, in its depot, telephone connections with each of the said telephone exchanges operating in Wellington.

After a careful consideration of this case and the testimony regarding same, it is very clear to the Commission that adequate public service requires the respondent company to furnish telephone connections between its depot building and the public telephone exchanges operated in Wellington; and the Commission therefore finds that the respondent company should not be permitted to discontinue the service of the Farmers Mutual Telephone Company, and an order will accordingly be issued, requiring the said respondent company to maintain the telephone of the said company in its depot at Wellington, until the further order of this Commission.

C. F. Foley, James A. Cable, John M. Kinkel, Commissioners.

NEBRASKA RAILWAY COMMISSION.

IN RE APPLICATION OF THE HOOPER TELEPHONE COMPANY.

[Application No. 2272.]

Rates — Increase.

A telephone company was authorized to increase its rates where it appeared that the additional revenue would be small, that the company had never declared dividends in excess of 6 per cent, and that while it had devoted its surplus earnings to additions and extensions, its maintenance expenditures, by reason of the aging condition of its plant, were gradually increasing.

Rates — Classification of service — Discrimination.

A telephone company was authorized to revise its schedule of rates to include a classification of its service into single line and party line service, with different rates for each class, it appearing that discrimination had existed by charging patrons the same rate for each class of service.

[January 28, 1915.]

APPLICATION for authority to revise schedule of telephone rates; granted.

Appearances: M. A. Uehling, president, and M. E. Shipley, manager.

ORDER.

Clarke, Chairman: The applicant herein is operating telephone exchanges in the towns of Hooper and Uehling, Nebraska. The present schedule of rates is as follows:

Business telephones, desk set	\$1.75
Business " wall "	1.50
Residence " desk "	1.25
Residence " wall "	1.00

Under the present filing the above rates apply both to single individual line service and two-party line service, there being as high as four parties on certain lines. Patrons of the company receiving the party-line service at the same rate furnished the individual-line users have been complaining to the company of the discrimination, and insisting on single-line service. To furnish the single-line service to all the patrons of the company in the towns served will require an expenditure on the part of the company estimated by its officers at not less than \$1,500. In order to wipe out the discrimination and be in a position to furnish the two classes of service, the applicant desires the approval of the following schedule of rates:

Business Phones.

Single-line desk-set phones	\$2.00
Party-line desk-set phones	1.75
Single-line wall phones	1.75
Party-line wall phones	1.50

Residence Phones.

Single-line desk-set phones	\$1.50
Party-line desk-set phones	1.25
Single-line wall phones	1.25
Party-line wall phones	1.00

It is the opinion of the officers of the company that with the higher rate charged for the single-line service, to wit, 25 cents per month, very few, if any, additional demands will be made upon it for the single-line service. In such case the additional revenue accruing to the company from the rates proposed would

aggregate \$357 a year. The testimony shows that the applicant has never declared dividends in excess of 6 per cent to its stockholders, and that while it has devoted its surplus earnings to additions and extensions, its maintenance expenditures, by reason of the aging condition of its plant, are gradually increasing. Applicant introduced comparisons of other telephone exchanges, of similar size and conditions of service, charging the rates applied for.

The Commission, in consideration of the evidence adduced, and being fully advised in the premises, finds that the petition of the applicant is just and reasonable, and should be allowed.

It is therefore ordered that the Hooper Telephone Company be and the same is hereby authorized, effective February 1, 1915, to publish, charge, and collect the rates hereinafter set forth, to wit:

Business Phones.

Single-line desk-set phones	\$2.00
Party-line desk-set phones	1.75
Single-line wall phones	1.75
Party-line wall phones	1.50

Residence Phones.

Single-line desk-set phones	\$1.50
Party-line desk-set phones	1.25
Single-line wall phones	1.25
Party-line wall phones	1.00

Nebraska State Railway Commission. (Signed) Henry T. Clarke, Jr., Chairman.

NEW JERSEY PUBLIC UTILITY COMMISSION.

**IN RE COMPLAINT OF ANITA S. WATSON AGAINST THE
HILLCREST WATER COMPANY.**

Service — Water rates — Payment — Lien on real estate.

The clause in a water company's application for service which requires the customer to agree that the real estate to which the water is supplied shall be bound and liable for the use of same is unreasonable.

Service — Freezing of water and pipes — Consumer's liability.

A water company cannot be held responsible for the protection of water and pipes upon a consumer's premises from freezing on the theory

that they have been installed by persons interested in the company, since the conditions within the house are entirely beyond the control of the company and are within the control of the occupant.

Rates — Rebate — Vacant premises.

There is no ground for complaint that no rebate is made by a water company from the annual charge when a house is vacant, where it appears that the charge, though an annual one, is payable quarterly in advance in so far as the minimum charge is concerned, and the charge for excess will be in accordance with the reading of the meter, and the company will, upon notification from the consumer, remove the meter when the house is vacant.

Service — Shutting off water — Notice by consumer.

A requirement that a consumer notify a water company when the house is to be vacated and the water shut off is reasonable.

Service — Shutting off water — Company's duty.

Turning on and shutting off water should be done by a representative of the company if the responsibility regarding the meter is to be transferred from the owner to the company during the period of shut-off.

Rates — Water — Charges for removing and replacing meters.

Charges for removing or replacing meters are not proper, but must be absorbed in the charge for turning on or shutting off water, where the accounting system of the Commission provides for the capitalization of the cost of installing the meter on the first occasion, since thereafter its removal or reinstallation is an operating charge and must be borne by the company in the usual way.

Service — Shutting off water at night.

The practice of a water company in shutting off water at night for the purpose of making new connections or changes in the distribution system is not proper.

Service — Shutting off water without notice.

A rule of a water company providing that water may be shut off without notice is reasonable, but in that practice the company is not justified in omitting the notification of its customers when water is to be shut off, unless conditions absolutely preclude such notice.

[January 12, 1915.]

PROCEEDING to determine reasonableness of certain rules of a water company; revision of certain rules recommended.

Appearances: Anita S. Watson, in person; H. J. Hapgood for the company.

Donges, President: In this proceeding, Mrs. Watson complained that certain rules of the Hillcrest Water Company were unjust and unreasonable, and the Board's opinion was asked with regard to these rules before they should be made effective.

The first item of the complaint referred to a clause in the application for service, in which the customer agreed that the real estate to which water is supplied should be bound and liable for the use of the same. This point was ruled on by the Board in the complaint of *W. F. Crowell v. Hillcrest Water Company*, to the effect that it was unreasonable to include this condition in the application for service.

The second point of complaint was to the effect that the customer would be held responsible for protection of the meter against freezing or other damage.

With reference to this, complainant contended that the piping in the house had been installed by persons interested in the water company, and that the water company should be responsible for the protection of the meter.

It was shown that the piping was frozen in the past winter, and that it became necessary to reinstall some portions of the piping. In the reinstallation of the piping, it is assumed that it was located in such manner as to prevent a recurrence of the danger of freezing.

While in this case there may be some responsibility on the part of persons or corporations more or less affiliated with the water company, with reference to the piping in this and other houses in mountain lakes, the fact remains that the property owner should arrange for proper protection for the meter and the connections inside of the building. In the Board's opinion, the meter must be furnished and installed by the water company at its own expense. The ordinary maintenance of the meter must be paid for by the water company. This ordinary maintenance, however, does not include damage caused by freezing, as the conditions within the house are entirely beyond the control of the water company and are within the control of the occupant of the house. It, therefore, seems clear that the responsibility for guarding the meter and connections against freezing lies solely with the occupant of the property, and any damage caused by freezing should be made up by the owner or occupant of the property.

The third complaint is to the effect that when a house is vacant

for a part of the year no rebate would be made from the annual charge for water.

With reference to this, it should be noted that the charge, although an annual one, is payable quarterly in advance, in so far as the minimum charge is concerned. The charge for water in excess of that paid for by the minimum would be charged at the end of the quarter in accordance with the reading of the meter. It is not correct that no rebate would be made if the house was vacant for any considerable period of time. The responsibility for notifying the company that the house is vacant is naturally upon the customer.

In the opinion of the Board, it is reasonable to provide that the customer must notify the company when the house is to be vacated and the water shut off.

It is further the opinion of the Board that turning on and shutting off water should be done by a representative of the company, if the responsibility regarding the meter is to be transferred from the owner to the company during the period of shut-off.

Rule 12 of the company provides that "no rebate for unoccupied houses will be allowed. (This refers only to a portion of a quarter.) In cases where water is not desired, notice must be given to the company in writing before the beginning of any new quarter, in which case the meter will be removed before or at the beginning of a new quarter, and the water shut off at the street by the company, at regular rates."

The company's rules, on page 2, call for a charge of \$1 for removing the meter; charge for turning on or shutting of water, \$1; charge for replacing the meter, \$1.

In the Board's opinion, the charges for removing or replacing the meter are not proper, but must be absorbed in the charge for turning on or shutting off the water. The accounting system prescribed by the Board provides for the capitalization of the cost of installing the meter on the first occasion; thereafter its removal or reinstallation is an operating charge, and must be borne by the company in the usual way.

The result of the operation of rule 12 would be to rebate to the customer the quarterly charge of \$1 in case a house is vacant

for a full quarter or more, but to charge to the customer the cost of turning on and shutting off the water; thus, if a residence was vacant for one quarter, the net charge to the customer for that quarter would be \$2, this being the aggregate of the two fees for turning on and shutting off the water. If the property was vacant for six months, the charge would still be \$2, this being the aggregate of the two charges for turning on and shutting off the water.

The fourth item of the complaint referred to the practice of the company of shutting off the water at various times during the night for the purpose of connecting up new customers, or making changes in the distribution system.

In the opinion of the Board, the practice of shutting off the water at night is reprehensible. In the inspector's report, it was recommended that this practice be discontinued, and that all connections to the mains and all shutoffs because of such changes be made during the daytime, and that there be no interruption to the service during the night, unless entirely unavoidable and beyond the control of the company. It was further recommended that every customer be notified when the service is to be shut off, in order that precautions may be taken to obtain a sufficient amount of water to tide over the period of discontinuance, and to safeguard boilers and other appliances against danger due to lack of water.

The company contended that it would be too great a task to notify all customers who might be shut off. In the opinion of the Board, this contention will not hold. If the distribution system of the Hillcrest Water Company is now provided with so few sectionalizing valves as to make it necessary to shut off any great proportion of the system in order to work at any one point, then the proper remedy is to install valves on the various branches so that no very large area need be deprived of water at any one time, due to anything in connection with the distribution system.

In rule 13 the company reserves the right at any time without notice to shut off the water in the mains "in case of conflagrations, breakage, or making repairs or extensions, or for other purposes," etc.

The company contends that this rule is a reasonable one, and the Board is of opinion that the company is justified in including in its rules a rule reading as this one does, but the Board's interpretation of this rule is that its usefulness lies in safeguarding the company in certain contingencies.

The Board's opinion is that this rule does not justify the company in actually shutting off water without notice, but that it must notify all customers when water is to be shut off when it is in any way possible to do so.

The Board therefore finds and determines that:

(1) The rule is reasonable which requires the customer to safeguard the meter against freezing or other damage;

(2) A rule providing that water may be shut off without notice is reasonable, but that in practice the company is not justified in omitting the notification of its customers when water is to be shut off, unless conditions absolutely preclude such notice;

(3) The practice of the company in shutting off the water at night for the purpose of making new connections or changes in the distribution system is not proper, and should be discontinued.

It is the Board's understanding that the matters referred to above will be amended by the company without a formal order. Unless acceptance of these conclusions is filed by the company on or before January 25, 1915, an order will issue.

Board of Public Utility Commissioners, by Ralph W. E. Donges, President.

OHIO PUBLIC UTILITIES COMMISSION.

ATHENS COUNTY HOME TELEPHONE COMPANY ET AL.

v.

JACKSON COUNTY HOME TELEPHONE COMPANY.

[No. 172.]

Service — Telephones — Physical connection.

The Commission cannot, under the Ohio Statutes, order a telephone company to restore physical connection between its lines and those of

other companies, where, by reason of different connections established by it, all of the localities served by such other companies have adequate interchange of service, and all of the subscribers of the complaining companies can reach all of the subscribers of the company refusing to re-establish the former connection; and it is immaterial that the connection asked for would be more direct.

Commissions — Jurisdiction — Contracts in restraint of trade.

The Commission is without jurisdiction to determine whether a contract between two telephone companies by which one of such companies agrees to give up its long-distance business, and to act as long-distance toll agent of the other exclusively, is void on the ground that it is in restraint of trade.

[January 4, 1915.]

PROCEEDINGS to compel defendant to re-establish physical connection between its lines and the lines of complainants; complaint dismissed.

By the **Commission**: The Athens County Home Telephone Company, of Athens, Ohio; the Citizens Telephone Company, of Circleville, Ohio; The Home Telephone Company, of Chillicothe, Ohio; the Logan Home Telephone Company, of Logan, Ohio; the McArthur Telephone Company, of McArthur, Ohio; the Nelsonville & Murray Home Telephone Company, of Nelsonville, Ohio; the Portsmouth Telephone Company, of Portsmouth, Ohio; and the Union Telephone Company, of Glouster, Ohio,— on the 16th day of March, 1914, filed their complaint against the Jackson County Home Telephone Company, alleging that the Athens County Home Telephone Company is a corporation organized under the laws of the state of Ohio, and is engaged in operating a telephone exchange in the city of Athens, Ohio, and adjacent territory, operating about 2,000 telephones in its territory; that the said Athens County Home Telephone Company, about ten years prior to the filing of this complaint, in conjunction with the McArthur Telephone Company, constructed a toll line from Athens, Ohio, to McArthur, Ohio, for the purpose of interchanging business in said territory, and also using the toll line of the McArthur Telephone Company from McArthur, Ohio, to Wellston, Ohio, connected with the lines of the Jackson County Home Telephone Company, and interchanged business with the lines, exchanges, and stations of the Jackson County Home Telephone Company over these two toll lines from and un-

til July 1, 1906; that the Citizens Telephone Company was a corporation organized under the laws of Ohio, operating a telephone exchange in Cireleville, Ohio, and in the country and towns adjacent thereto, with a large number of subscribers, and in conjunction with the Home Telephone Company of Chillicothe, Ohio, and its connections; with the McArthur Telephone Company, over the McArthur Telephone Company's line to Wellston, Ohio, interchanged messages between its said lines and the lines of the Jackson County Home Telephone Company up and until July 1, 1906; that the Chillicothe Home Telephone Company operated an exchange in Chillicothe, Ohio, and vicinity, with a large list of patrons; that they constructed and maintained, in conjunction with the McArthur Telephone Company, a toll line extending from Chillicothe to McArthur, and with the use of this toll line and the toll line from McArthur, Ohio, to Wellston, Ohio, provided long-distance service between the lines of the Home Telephone Company of Chillicothe, and the Jackson County Home Telephone Company up and until July 1, 1906; that the Logan Home Telephone Company maintained an exchange at Logan, Ohio, with a system of lines extending through Hocking county, with 1,200 subscribers; that in conjunction with the McArthur Telephone Company they erected a toll line from the city of Logan, Ohio, to the village of McArthur, Ohio; with the use of this line and the lines of the McArthur Telephone Company to Wellston, Ohio, connections were exchanged between its subscribers and the patrons of the Jackson County Home Telephone Company; that the McArthur Telephone Company operated an exchange at McArthur, Ohio, and spent large sums of money in construction of toll lines in conjunction with other companies for providing service through its said lines and from said company and other numerous connections with the lines of the defendant company, and thus providing through tolls and prorates received a profitable return on the large sums thus invested in said toll lines, with the expectation and reasonable assurance of the continuance of said connections and interchange through the toll lines from all the complainant companies with the exchange of defendant company. Practically the same allegations are made as to direct connections

in reference to the Nelsonville & Murray Home Telephone Company and the Union Telephone Company.

Complainants further say that prior to July, 1, 1906, by means of the several toll lines described, that interchange of business and connections was maintained between their said systems and lines with the systems and lines of the Jackson County Home Telephone Company, and that said toll lines and connections and equipment are still maintained intact and fully adjusted for a successful interchange of messages; that on the 1st day of July, 1906, the defendant company discontinued this service and interchange of messages with all the complainant companies except the McArthur Telephone Company, and still refuses to accept messages from the lines of complainants, or to transmit messages to the line of said complainants, or to receive and distribute messages destined to its said territory and their subscribers and patrons. The complainants aver that the same physical connection is now maintained as prior to July 1, 1906; that complainants operate about 19,000 telephones, and because of the wrongful and arbitrary action of defendant company, are wholly cut off from any means of connection with the said territory of the defendant, and cannot secure connection therewith by any other means, to the great disadvantage and inconvenience of their subscribers, and to the inconvenience of the public in Jackson county; that a large part of the territory covered by their lines and service has no connection with the territory occupied and developed by defendant company, and is unable to secure such connections with said territory unless so provided through lines and systems of complainants; and they pray for an order commanding the defendant company to receive and transmit to the proper destination all messages destined to points in its territory, and to interchange toll messages with said complainants and their several patrons and subscribers, conveniently reached by their lines and in conjunction with the several complainant companies; to establish and maintain through lines between the localities receiving telephone service from the several complainants and the territory and district of the Jackson County Home Telephone Company, so that the users of the telephone lines and instruments of either the complainant or defendant companies may communicate direct by

continuous lines between said localities with the patrons and users of the telephone lines of the other company.

To the complaint the defendant company filed its answer. After admitting the corporate capacities of complainants, it denies substantially all the allegations of the complaint, and especially denies that any of the toll-service lines mentioned in said complaint were adequate and remunerative and a convenience to the subscribers of defendant company; and it denies that said toll lines, connections, and equipment as described in complaint are now maintained intact and fully adjusted for the successful interchange of messages.

For a second defense, defendant states that prior to the 1st day of March, 1905, that it was an independently owned and operated telephone company, engaged in the general telephone business, with its principal exchanges located at Jackson, Wellston, Oak Hill, and Coalton, Jackson county, Ohio, and the village of Hamden, Vinton county, Ohio; that it had a written contract for long-distance toll service and telephone connection with the United States Telephone Company, and through the toll lines of the said United States Telephone Company, with the lines of complainant companies herein; that in said written contract it is provided that the said United States Telephone Company was to construct long-distance telephone lines, a branch toll line of copper wire to the village of Richmondale, in Ross county, Ohio, and that this answering defendant was to construct a copper toll circuit from its exchange in the city of Jackson, Ohio, to connect with the toll line of the United States Telephone Company, at Richmondale, Ohio, by and through which the complainant companies were to, and did, receive telephone connections for toll service with the defendant; that in compliance with said written contract, the defendant constructed said copper-toll line to Richmondale, Ohio, but the United States Telephone Company failed and neglected to comply with the terms of said agreement, and continued to fail so to do until the 1st day of March, 1905; that some inadequate and insufficient connection was supplied by the United States Telephone Company for connection with the complainant companies through the said Richmondale line, but that the long-distance connections were inadequate, in-

sufficient, and unsatisfactory to the subscribers of the defendant's system of telephones. By reason of this, the defendant severed long-distance connection with the United States Telephone Company and complainant companies, and now objects to renew the same, and has disposed of its long-distance line to Richmondale, Ohio, and is not now engaged in long-distance telephone business or toll service except as the agent of the Central Union Telephone Company, under a contract in writing made on the 1st day of March, 1905. It represents that if it should be compelled to make connections and do an interchange of business with the complainant companies in the manner prayed for in the complaint, it will be compelled to expend a large sum of money in rebuilding its exchanges, placing therein toll switch-boards, and erecting toll lines, and that it would be at a large expense to maintain such service, and such connections when so made would be unprofitable and an unwarranted expenditure of the funds of the defendant company.

For a third defense, and by way of interpleader, it says it made a contract with the Central Union Telephone Company for long-distance service; that the lines of the Central Union Telephone Company and its connections form continuous and adequate lines of connection between all the localities served by the defendant company, and all of the localities served by all the complainant companies; and that adequate service over said lines and connections is, and for a long time past has been, established and provided for; that by the terms of this contract with the Central Union Telephone Company, made in 1905, it was agreed that defendant was to connect its subscribers with the long-distance and toll-service appliances of the said Central Union Telephone Company, and with no other company, and that said defendant was to act as the long-distance toll agent of the said Central Union Telephone Company in Jackson county, and no other company, without the consent of the said the Central Union Telephone Company; and that the said the Central Union Telephone Company has, at a large expenditure of money, by placing equipment, toll lines, and long-distance switch-boards in defendant's exchange, fulfilled its part of said agreement; and that the defendant, if compelled to make the connections as prayed for,

would be liable in damages, in a large amount, to the Central Union Telephone Company, for the violation of the express terms of said written agreement.

The defendant company, on the 2d day of June, 1914, filed a supplemental answer, stating in substance that on or about the 27th day of May, 1914, the contract between the Central Union Telephone Company and the defendant, referred to and described above, was, by the consent of the parties thereto, modified so as to permit the establishment of a connection between the lines of the defendant company and those of the United States Telephone Company, and the operation by the defendant company of its lines in connection with the lines of the said the United States Telephone Company, whereby all the complainant companies and their subscribers are now able to secure a connection between their telephones and those of the subscribers and the patrons of the defendant company, and they ask that the complaint be dismissed.

There seems to be no dispute about the facts in this case. The allegations of the complaint, as far as physical connections of the telephone companies are concerned, were established by the evidence. It appears from the evidence that there is a toll line constructed between Athens, Ohio, and McArthur, Ohio, owned and maintained by the McArthur and Athens Telephone Companies; that there is a toll line between Logan and McArthur, Ohio, owned and maintained by the McArthur and Logan Telephone Companies, and that there is a toll-line connection between Chillicothe and McArthur, Ohio, owned and operated by the Chillicothe and McArthur Telephone Company, and the McArthur Telephone Company owns a toll line running from McArthur, Ohio, to within a mile and one half of the Wellston exchange of the Jackson County Home Telephone Company, so that there is no question but what there is a direct connection between the lines of the complainant companies and the lines and exchanges of the defendant company; that this connection for long-distance service is more direct than the connection established for the same purpose by the defendant company; that these direct toll lines and connections were used by the complainant companies and the defendant company for long-distance

service up and until July 1, 1906. On that date the defendant company made a deal with the Central Union Telephone Company, whereby it agreed not to do any more long-distance business, but do a purely local business, and to turn over all its long-distance messages to the Central Union Telephone Company, and agreed at the same time that it was to act as the long distance toll agent of the Central Union Telephone Company in Jackson County, Ohio, and for no other company, without the consent of the said Central Union Telephone Company.

When this contract was entered into, the defendant company notified the complainant companies that it would not accept any long-distance messages from them over the toll lines described in complaint, and referred to above, and no service and connection has been had between the complainant companies and the defendant company since that date, and none was had at the time of the filing of this complaint. It is the object of the complainants to have the Commission make an order requiring the Jackson County Home Telephone Company to restore the direct connection formerly had between these companies over the direct lines above described and referred to. The defendant company makes the claim in their answer that they are not compelled to restore this connection in law, for the reason that the lines of the defendant company, together with the lines of the Central Union Telephone Company and its connections, form continuous and adequate lines of communication between all the localities served by the defendant company and all the localities served by all the complainant companies, and that adequate service over said lines and connections is established and for a long time past has been established and provided for. This allegation of the defendant's answer is amply sustained by the evidence, and the defendant's claim in this regard, that this connection is sufficient in law, is sustained by the opinion of the attorney general of Ohio to this Commission, in the Butler County Telephone Case, and also by the decision of the common pleas court of Butler county.

However, the defendants do not rely absolutely upon this connection being sufficient in law, and they set up in their supplemental answer a contract made with the United States Telephone Company, of the date of April 24, 1914, whereby, under the

terms of this contract, the defendant company established a connection between the lines of the defendant company and those of the United States Telephone Company, and by reason of the operation of the defendant company of its lines in connection with the lines of the United States Telephone Company, all the complainant companies and their subscribers are now able to secure connections between their telephones and those of the subscribers and patrons of the defendant company. The allegations of the supplemental answer are not denied, and are sustained by the evidence. At the time the complaint was filed, this service was not to be had by the complainant companies and their subscribers. It was complained that no interchange of service existed at the time of the filing of the complaint. The connection as now made by the defendant company amply serves the localities affected by the complaint, and they now have long-distance connection with all the subscribers of the defendant company, and have adequate service. That is all that the Commission is interested in.

This action is brought under favor of § 614-63, General Code, which is the only section authorizing the Commission to order two or more telephone companies to establish and maintain through lines for the passage of continuous messages, or for the transfer of messages at common points, and the jurisdiction of the Commission is specifically limited to cases where such service is not already established, or provided for unless public necessity requires additional service. So it follows, in order to give the Commission jurisdiction, there must be either an absence or lack of interchange of service, or, if they have the service, it must be inadequate. The Commission finds from the admissions of the pleadings and from the evidence, that at the time of the hearing of this complaint, by reason of the contract with the United States Telephone Company, made on the 24th day of April, 1914, and the service that is furnished under said contract, together with the already existing service of the Central Union Telephone Company, that not only all the localities served by the complainant companies have sufficient interchange of service, but all the subscribers of the complainant companies can now reach all the subscribers of the defendant company. It is therefore the opin-

ion of the Commission that the complaint made by the complainant companies is completely satisfied, and no public necessity has been shown to exist in this case, requiring additional service.

It is claimed by the complainants that because the connection between the lines of the complainants and those of the defendant is a more direct route for the transmission of long-distance messages, that the Commission should grant the prayer of the complaint. We do not agree with the contention of the complainants in this regard. The defendant has the sole right to determine the agency or agencies to be employed for the purpose of transporting messages, and the complainants have no right to insist that they shall be the companies so employed.

"At common law, a carrier is not bound to carry except on its own line, and we think it quite clear that if he contracts to go beyond he may, in the absence of statutory regulations to the contrary, determine for himself what agencies he will employ. His contract is equivalent to an extension of his line for the purposes of the contract, and if he holds himself out as a carrier beyond the line, so that he may be required to carry for all alike, he may nevertheless confine himself in carrying to the particular route he chooses to use. He puts himself in no worse position by extending his route, with the help of others, than he would occupy if the means of transportation were all his own. He certainly may select his own agencies and his own associates for doing his own business." *Atchison, T. & S. F. R. Co. v. Denver & N. O. R. Co.* 110 U. S. 667, 680, 28 L. ed. 291, 296, 4 Sup. Ct. Rep. 185.

All the Commission is interested in is seeing that the complainant companies secure the service they are entitled to under the law, and the Commission finds that by reason of the arrangements already made with the Central Union Telephone Company and the United States Telephone Company that they have adequate long-distance service.

One of the principal contentions made by the complainant companies in their brief filed with the Commission is that the contract between the Central Union Telephone Company and the defendant company is absolutely null and void, because the same is in restraint of trade, and the defendant company has

set up this contract as one of its main defenses. It is not in the province of this Commission to pass upon the legality of this contract. The Commission has no judicial powers. As far as this Commission is concerned, this contract is a valid and existing contract until set aside by action in a proper court. However, the Commission, in deciding this case, did not find it necessary to consider this contract. After it found that the complaint of the complainant companies was satisfied by reasons heretofore set forth in this opinion, it did not consider the questions raised by the complaints in reference to this contract, nor the third defense made by the defendant company.

For reasons heretofore stated, the complaint will be dismissed.

The Public Utilities Commission of Ohio, by O. H. Hughes, Chairman, C. C. Marshall, E. W. Doty, Commissioners.

Note.—In this case the point was made by the defendant company that it was sufficiently justified in law in refusing to establish the physical connection between its lines and the lines of the complaining companies, on the ground that by reason of its contract with another company continuous and adequate lines of communication between all the localities served by the complaining companies were established. It is to be observed that the Commission intimates that this would be a sufficient legal justification for refusing to re-establish the desired connection between the lines of the complainant and defendant companies, but that it decides the case upon other grounds.

The question of the Commission's powers under § 66 of the Ohio public utilities act, §§ 614–63 of the General Code of Ohio, to compel the physical connection of telephone lines, so that all of the subscribers or patrons of one telephone company in a certain locality can be directly connected with all the subscribers or patrons of another telephone company in a certain other locality, when the lines of one of the companies serve and connect both of the localities, was considered in the three following cases: Hughes v. Hamilton Teleph. Co. No. 136, August 20, 1912 (1912; Ohio P. S. C. R. 252; III. Com. Tel. Cases, 1523, American Tel. & Tel. Co. series); Hamilton Home Teleph. Co. v. Cincinnati & S. Bell Teleph. Co. No. 137, August 20, 1912 (1912; Ohio P. S. C. R. 259; III. Com. Tel. Cases, 1526, American Tel. & Tel. Co. series); Hamilton Home Teleph. Co. v. American Tel. & Tel. Co. and Cincinnati & S. Bell Teleph. Co. No. 143, August 20, 1912, (1912, Ohio P. S. C. R. 275; III. Com. Tel. Cases, 1528, American Tel. & Tel. Co. series).

The disposition of the cases turned upon the interpretation of the sentence, "between different localities which cannot be communicated

with or reached by either company alone," which appears in § 66 of the public utilities act. The Commission referred this question to the attorney general of the state, June 29, 1912, and upon his opinion, dated August 2, 1912, dismissed the cases on the ground that it was without jurisdiction to compel the physical connection prayed for in the petitions.

On October 11, 1912, the Hamilton Home Telephone Company and the other complainants took an appeal from the orders of the Commission to the court of common pleas of Butler county, Ohio.

In his opinion, the attorney general, after quoting the full text of § 66 of the statute, continued as follows:

"The language of the statute above cited is very plain. It says that the Commission may act either upon complaint filed, or on its own initiative, where two or more telephone companies (1) have lines which already form a continuous line of communication, or (2) could be made continuous by the construction and maintenance of suitable connection or the joint use of equipment, or (3) where such companies could transfer messages at a common point, so as to require such companies to transmit calls on such lines already in a continuous line of connection, or to make the necessary connections and then transmit such calls, or transfer messages, between different localities. But all of the foregoing is subject to this qualification, that such orders can only be made for connection between different localities which cannot be communicated with or reached by the lines of either company alone, and where such service is not already established or provided for. But, in the latter case, even though some company or companies already have through service between such localities, yet if public necessity requires additional service by the connecting up of more companies whose lines are or could be made continuous, the Commission could make the order.

"It therefore appears that, to enable the Commission to act, it must first be established that neither one of the companies has lines which communicate with or reach both of the localities. Secondly, it must be shown that the two companies have lines which either form, or can be connected so as to form, a continuous line between the two localities; that is to say, when joined end to end, neither reaching the whole of the necessary distance. The whole context of the section shows that the legislature did not intend this provision to apply when the lines paralleled. Thirdly, if there is already communication by direct single line or joined continuous lines of some company or companies, then there must be affirmative evidence that public necessity requires the linking of two new companies, if such there be, whose lines are continuous when joined together, and neither of which reaches both localities by its own independent line.

"The word 'localities' as used in the act may be construed by the Commission according to the circumstances of each case, so that no

precise and unalterable physical limitations can be placed upon it. But from the context of the statute, it would appear that the legislature intended it to mean a whole territory, or the zone of operation of any telephone company. In the cases under consideration, the complaint being in behalf of the Hamilton Home Telephone Company, it is apparent that the whole zone covered by the operation of that company is one 'locality'—as a whole, while the city of Cincinnati, as a whole, is the other, and not subsidiary parts of either.

"Therefore, from a full and careful consideration of the facts stated in your communication, and a most thorough reading and consideration of the law and cases cited in the briefs furnished me by counsel for both complainant and defendants, I am compelled to reach the legal conclusion that the legislature has not authorized your Commission to act where it appears that the defendant company or companies already, without the aid of any other company, connects both localities, in this case, *viz.*, its own exchanges in Hamilton and Butler counties.

"Under the rule of construction, above quoted, as laid down by our supreme court, and applying it to the section involved in the controversy submitted to me, under the plain language of said section, I reach the above conclusion, believing the law in its present form is not sufficiently broad to cover a case as presented by the complainant, and only the legislature can make the necessary changes to cover such cases." (1912; Ohio P. S. C. R. 736; III. Com. Tel. Cases, 1519 American Tel. & Tel. Co. Series.)

See also *Carey Farmers Teleph. Co. v. Central Union Teleph. Co.* Case No. 17, decided by the Ohio Commission, May 19, 1914, dismissing a petition for compulsory physical connection of telephone lines, on the ground that one company had lines connecting the localities in question, and that the Commission was therefore without jurisdiction to grant the relief prayed for. (31 Com. Leaflets, 86, American Tel. & Tel. Co. Series.)

OREGON RAILROAD COMMISSION.

HUBBARD CREAMERY COMPANY ET AL.

v.

MOLALLA ELECTRIC COMPANY.

[U—F—114.]

Rates — Unreasonableness — Small motors — Domestic heating appliances.

An electric lighting and power company was ordered to amend its rates so as to permit domestic heating appliances and small motors not

exceeding two kilowatt total connected load to be used as a part of the installation under its regular business or residence lighting rates, it appearing that the company's schedules for power rates had formerly been applied to current consumed by such small motors and heating appliances, which schedules were based upon the maximum demand of the consumer with a minimum charge of \$1 per kilowatt of maximum demand, but provided that no minimum charge of less than \$2 would be considered.

[January 11, 1915.]

ORDER amending unreasonable rates.

Appearances: Octav Voget and S. W. Weaver for plaintiffs; and A. E. Clark for defendant.

By the Commission: Now on this 11th day of January, 1915, this matter comes on for final determination, having been heretofore fully heard and submitted at a hearing held on the 14th day of December, 1914, at Hubbard, Oregon.

The Commission having considered the testimony offered and proofs submitted, and now being fully advised in the premises, finds:

1. Defendant, Molalla Electric Company, is a corporation of the state of Oregon, engaged in the generation, transmission, and sale of electricity for domestic and commercial purposes, and as such is a public utility, subject to the provisions of chapter 279 of the Laws of Oregon for the year 1911.

2. Defendant, in its effective schedule of rates on file with the Commission, maintains certain flat rates for business and residence lighting contained in schedules A and B, and provides certain meter rates for business or residence lighting (optional) in schedule C. Schedule D contains meter rates for power, for an unlimited use, and schedule E meter rates for power not to be used on the peak of the defendant's service. Defendant's schedule C rates are as follows:

First 20 kilowatt hours per month at 15¢ per kilowatt hour.
 Next 10 kilowatt hours per month at 10¢ per kilowatt hour.
 Next 70 kilowatt hours per month at 7½¢ per kilowatt hour.
 All in excess of 100 kilowatt hours per month 5¢ per kilowatt hour.
 Minimum charge \$1 per month.

Schedule D and E rates are based upon the maximum demand of the consumer with a minimum charge of \$1 per month

per kilowatt of maximum demand, but no minimum charge is considered less than \$2 per month. The rates stated in schedule D and E vary in proportion to the time that the maximum demand of the consumer is used.

3. It is the practice of the defendant in cases where small motors and domestic heating appliances are used on the premises of consumers using its product under schedule C for lighting purposes, to insist upon schedule D or schedule E being applied for current consumed by such small motors and appliances. The resulting rate for domestic heating appliances and small motors (not exceeding two kilowatts total connected load) is unjust and unreasonable. It is customary, and a reasonable practice, to permit consumers under business or residence lighting schedule to install domestic heating appliances and small motors, not exceeding two kilowatts total connected load, as a part of their regular installation, and without requiring a separate meter and monthly minimum therefor. In so far as the practice of the defendant does not permit this to be done, it is unjust and unreasonable.

4. It is alleged in the complaint, and considerable testimony was introduced to show, that the service afforded by the defendant was subject to interruptions, and that the current was shut off frequently without any notice being given to patrons thereof. Those interruptions, however, were due in the main to poorly constructed transmission lines, which lines have been recently rebuilt, and such interruptions should therefore be reduced to the minimum.

The practice of the utilities using every reasonable effort to inform their patrons of interruption of service which can be foreseen, the Commission believes, is only reasonable, and suggests that whenever such interruptions can be foreseen patrons of this defendant be given ample notice thereof.

5. Twenty days is a reasonable time in which to comply with the provisions hereof.

It is therefore ordered, considered, and determined that within twenty days from and after the date of service of copy of this order upon the defendant, that it shall amend its existing schedule C by adding thereto the following:

"Domestic heating appliances and small motors not exceeding two kilowatt total connected load may be used as a part of the consumer's installation on his regular lighting meter at the above rate,"

—and thereafter shall follow and observe such practice in making charges to its patrons.

Railroad Commission of Oregon.

PENNSYLVANIA PUBLIC SERVICE COMMISSION.

IN RE DISCOUNTS FOR PROMPT PAYMENT AND PENALTIES FOR DELAYED PAYMENT OF BILLS.

[Administrative Ruling No. 6.]

Rates — Discount for prompt payment — Penalties — Rules.

All public-service companies in Pennsylvania are ordered to set forth clearly in their posted and filed tariffs the rules, circumstances, and conditions under which penalties for failure to pay bills promptly are imposed and discounts for prompt payment allowed, and such rules are to be applied without discrimination.

[January 22, 1915.]

ADMINISTRATIVE ruling requiring the posting of rules governing discounts for prompt payment and penalties for delayed payment of bills.

By the Commission: Article 3, § 1, subsec. (c) of the public service company law, which went into full force and effect January 1, 1914, provides that any public service company "may require the payment of charges in advance, the making of reasonable minimum payments and deposits to secure future payments of such charges; or it may allow discounts for prompt payments of the same, or impose penalties for failure to pay promptly; Provided, That, such advance charges, minimum payments, deposits, discounts, or penalties are reasonable and apply equally and without discrimination or preference to all shippers, consumers, and patrons, under like conditions and under similar circumstances;" and

Article 2, § 1, subsec. (d) of said act of assembly, further provides that "every public service company shall also file with and as a part of such tariffs and schedules, and post, as directed, all rules and regulations that in any manner affect the said prices, charges, rates, fares, tolls, or other compensation."

Under the above provisions of the law, all public-service companies imposing penalties for failure to pay bills promptly, or allowing discounts for prompt payment of bills, must provide in their posted and filed tariffs, or in their rules and regulations which are part of said tariffs, a rule clearly stating the said purpose for which, and the exact circumstances and conditions under which, penalties are imposed and discounts allowed, and in the case of allowance of discounts, stating also, in clear and unambiguous terms, whether or not payments mailed, as evidenced by the United States Postoffice mark, on or previous to the last day of the discount period, will be deemed by the company to be a payment of the bill within such discount period.

No opinion is here expressed with respect to the propriety of the continuance or adoption of a rule providing for the mailing of payment on the last day of the discount period, but this ruling is issued merely for the purpose of requiring that such practices as are in vogue, or as may be adopted, shall be clearly set forth in the tariff, and applied equally and without discrimination or preference to all shippers, consumers, and patrons, under like conditions and under similar circumstances, as provided by the aforesaid act of assembly.

It is hereby ordered, that all public service companies shall comply with the above ruling by supplement to or reissues of existing tariffs, on or before March 1, 1915, on five days' previous notice to this Commission and the public, posted and filed as required by law.

The Public Service Commission of the Commonwealth of Pennsylvania.

PENNSYLVANIA PUBLIC SERVICE COMMISSION.

IN RE PETITION OF THE CORNWALL & LEBANON RAILROAD COMPANY.

[Application Docket No. 361.]

Grade crossing — Jurisdiction — Municipal consent.

The Commission will not in the exercise of its jurisdiction approve a grade crossing over an extensively traveled street of a city which protests against the granting thereof, unless the evidence in favor of such crossing is certain and convincing that the service, accommodation, and convenience of the public will be attained.

[January 8, 1915.]

APPLICATION by a railroad company for approval of the construction of a siding at grade across a street in the city of Lebanon; denied.

Appearances: E. E. McCurdy for the Cornwall & Lebanon Ry. Co.; C. H. Killinger and S. P. Light for the Lebanon Steam Co.; Walter C. Graeff, City Solicitor, for the city of Lebanon; and Howard C. Sherk for certain property owners.

Wallace, **Commissioner**: This is an application by the Cornwall & Lebanon Railroad Company for the approval of the construction of a siding at grade across Willow street in the city of Lebanon, at a point 140 feet west of the western boundary of North Seventh street in said city. The purpose of this siding is to furnish additional facilities to the Lebanon Steam Company (a public-service company) for the delivery of coal at its plant. A protest against the granting of a certificate of public convenience evidencing the Commission's approval of this grade crossing was filed by the city of Lebanon.

Section 18, article V., of the public service company law, provides that the approval of the Commission of any application for the construction of a crossing at grade, or above or below grade, shall only be given when the Commission shall find or determine that the granting or approval of such application is necessary or proper for the service, accommodation, convenience, or safety of the public. The applicant in this case, in the evidence produced

at the hearing, has failed to show that this crossing would be for the service, accommodation, or convenience of the public.

The Cornwall & Lebanon Railroad Company, after repeated efforts and most liberal offers, was unable to obtain the consent of the city of Lebanon to this crossing. It is true that the Commission has exclusive jurisdiction in the matter of the construction, alteration, relocation, or abolition of crossings at grade, above or below grade. But the Commission would not be justified in approving a grade crossing over one of the most extensively traveled streets of a city in face of lack of consent by said city and protest made to the granting thereof, unless the evidence produced at the hearing was certain and convincing that the service, accommodation, and convenience of the public would be attained. In this procedure the preponderance of the evidence is to the effect that there is no public necessity for the crossing in question, the only benefit to be derived being a more economical way of handling coal by the Lebanon Steam Company.

Therefore, it is the opinion of the Commission that the petition in this case should be dismissed and the approval of the grade crossing in question denied, and an order will be so entered.

Present: Frank M. Wallace, Acting Chairman; S. LaRue Tone, Samuel W. Pennypacker, Emory R. Johnson, Milton J. Brecht, Charles F. Wright, Commissioners.

VERMONT PUBLIC SERVICE COMMISSION.

IN RE PETITION OF MILITARY POST STREET RAILWAY COMPANY.

[No. 403.]

Security issues — Retirement of bonds — Betterments.

A railroad company was authorized to increase its capital stock from \$100,000 to \$200,000 in order to retire bonds to the amount of \$75,000 and to capitalize the sum of \$25,000 invested in additions to roadbed and equipment.

[February 3, 1915.]

PETITION for authority to increase capital stock; granted.

Appearances: A. G. Whittamore for the Military Post Street Ry. Co.; and T. E. Hopkins, State's Attorney, for Chittenden county for the state of Vermont.

REPORT.

By the Commission: This is a petition by the Military Post Street Railway Company alleging that there is outstanding \$75,000 of first mortgage bonds of said company, the proceeds of which were invested in the roadbed and equipment of said company; that said bonds come due and payable on February 15, 1915; that an additional sum of \$25,000 has been invested in procuring additional equipment.

The prayer of the petition is that this Commission grant the petitioner leave and permission to increase the capital stock of the petitioner from \$100,000 to \$200,000 and to issue said additional \$100,000 capital stock for the purpose of retiring said bonds and for the purpose of capitalizing said sum of \$25,000 invested in additions to the roadbed and equipment of the petitioner.

After due notice, a hearing was had at the time and place and with the appearances above noted.

From the evidence, we find that at a meeting of the stockholders of said corporation held at the city of Burlington on the 16th day of January, 1915, at which meeting all of the capital stock of said corporation was represented, it was unanimously voted to increase the capital stock of said corporation from \$100,000 to \$200,000. We further find that the above recited allegations of said petition are true; that the petitioner sought to be allowed to increase its capital stock from \$100,000 to \$200,000, and to issue said \$100,000 of additional stock for the purpose of retiring said mortgage bonds and capitalizing said additional sum of \$25,000 invested in said additions to roadbed and equipment.

CERTIFICATE.

We hereby certify that we authorize the Military Post Street Railway Company, a corporation organized under the laws of the state of Vermont, to increase its capital stock from \$100,000 to \$200,000 and to issue said additional \$100,000 of capital stock at par, the proceeds of said issue to be used in retiring said

\$75,000 of first mortgage bonds, and providing for the capitalization of said additional sum of \$25,000 invested in additions to said roadbed and equipment as aforesaid. And if said Military Post Street Railway Company does so increase its capital stock, it is hereby ordered forthwith thereafter to file with this Commission a written return, signed by its president and treasurer and verified by their oaths, reciting its doings under this certificate, the amount of such increase, the disposition thereof, the price of sales thereof, and the application of the proceeds.

Public Service Commission, by Robert C. Bacon, Wm. R. Warner, Park H. Pollard.

WISCONSIN RAILROAD COMMISSION.

TOWN OF WHEATON

v.

MINNEAPOLIS, ST. PAUL, & SAULT STE. MARIE
RAILWAY COMPANY.

Railroads — Dangerous crossing — Safety device.

The expense necessitated by the installation of a safety device at a more than ordinarily dangerous railway crossing is not a justification for subjecting travelers using the crossing in the course of their daily occupation to such unusual danger, although the traffic is not heavy.

[January 29, 1915.]

PROCEEDING to compel a railroad company to adequately protect dangerous highway crossing; installation of automatic electric bell and visual signal for night; ordered.

Appearances: G. W. Cady for the town of Wheaton; Wm. Meiner for the town of Tilden; W. H. Gates for the town of Howard; and Kenneth Taylor for the respondent.

By the **Commission**: The petition alleges in substance that a highway crossing on the line of the Minneapolis, St. Paul, & Sault Ste. Marie Railway Company, located on the town line between the town of Wheaton and the town of Tilden between section 6, township 28 north, range 9 west, and section 31, township 29 north, range 9 west, in Chippewa county, is dangerous to public travel on account of the surrounding physical con-

ditions. The Commission is therefore asked to require the respondent to adequately safeguard this crossing.

No answer was filed by the respondent, but a general denial that the crossing is dangerous was made by counsel at the opening of the hearing.

The hearing was held at Howard Siding on January 7, 1915. G. W. Cady appeared for the town of Wheaton, Wm. Meiner for the town of Tilden, W. H. Gates for the town of Howard, and Kenneth Taylor for the respondent.

The testimony shows that the crossing in question is known as the Cameron crossing, and is located about three quarters of a mile southeast of Howard Siding. The highway runs east and west and the railway northwest and southeast, curving to the west north of the crossing. The single track lies in a cut the banks of which are about 20 feet in height at the deepest point and the highway descends to the track from both sides. Witnesses stated that at points in the highway on either side of the railway where the descent to the track begins it is possible to see the smoke of trains approaching through the cut if weather conditions are favorable, but that under certain conditions the smoke hovers in the cut, and is not visible. After beginning the descent to the track a traveler must be within the right of way lines and very close to the track to obtain a clear view of trains. Respondent's engineer testified that he was able to see a pole 12½ feet in height in the center of the track from points of observation in the highway as follows:

Point of observation in highway from track.	View Northwest.	View Southeast.
West 25 feet	700 feet	Unobstructed
" 50 "	200 "	500 feet
East 50 "	1300 "	Not given
" 75 "	1300 "	" "

He asserted that at a point in the highway 100 feet west of the track it is possible to see the smoke of a train approaching from the northwest for a mile, and that at a point 1,000 feet west a portion of the track at Howard Siding is visible. The track is on a descending grade from the northwest, and trains from this

direction do not always work steam at the crossing, thus making little noise. Witnesses asserted that trains sometimes fail to whistle for the crossing. Several narrow escapes were described.

The highway is a main-traveled road between Chippewa Falls and Albertville. Witnesses estimated that on the average from 5 to 15 teams cross daily, but that in the fall as many as 40 or 50 vehicles use the crossing in a day. The traffic consists of farm vehicles and some automobiles. Two children are obliged to cross twice a day on their way to and from school. Daily consignments of milk and cream are hauled over this road, which is also regularly used by a rural mail carrier. There are ten regular train movements, three of which occur at night. In addition one extra freight in each direction is operated, ordinarily crossing after dark.

In the light of the testimony it is our opinion that the crossing in question is more than ordinarily dangerous. The traffic is not heavy, but it is necessary for a number of people to use the crossing in the course of their daily occupations. To subject these travelers constantly to unusual danger for the purpose of saving the expense necessitated by the installation of some safety device is certainly not justified. It is our judgment that the installation of an automatic electric bell and an illuminated sign for night indication will provide reasonable protection at this crossing under the existing traffic conditions.

It is therefore ordered that the respondent, the Minneapolis, St. Paul, & Sault Ste. Marie Railway Company, install and maintain at the highway crossing on its line at the town line between the towns of Wheaton and Tilden about three quarters of a mile southwest of Howard Siding, an automatic electric bell and a visual signal for night indication, plans to be submitted to the Commission for approval.

Ninety days are considered a sufficient time within which to comply with this order.

Railroad Commission of Wisconsin, by David Harlowe, John H. Roemer, Halford Erickson, Commissioners.

INDIANA PUBLIC SERVICE COMMISSION.

IN RE PIKE COUNTY TELEPHONE COMPANY, EX PARTE.

[No. 1041.]

Security issue — Bonds.

A telephone company, upon application for authority to issue \$75,000 of a series of 20-year 6 per cent gold bonds, secured by first mortgage on all its property and plant, was authorized to issue such bonds in the amount of \$50,000, on condition that the same should be sold for cash plus accrued interest, it appearing to the Commission without a valuation of the plant that the value thereof exceeded the amount of the company's bonds outstanding, plus those for which authority was asked, and that the purposes of the issue were for the payment of debts created wholly on account of new construction and equipment.

[February 3, 1915.]

PETITION for authority to issue bonds; granted.

Appearances: Ezra Mattingly and Bernard Korbly for the petitioners.

By the Commission: The petition in this case was filed on the 9th day of October, 1914, and prays for authority to issue bonds of the face value of seventy-five thousand (\$75,000) dollars. The petition is in proper form.

A hearing was had on the petition at the rooms of the Commission in Indianapolis on the 1st day of December, 1914. Ezra Mattingly and Bernard Korbly appeared for the petitioners.

The petitioner filed a statement signed by members of the city council, the city attorney, and city clerk of Washington, Indiana, requesting the Commission to grant authority to the petitioner to issue bonds in the sum of seventy-five thousand (\$75,000) dollars.

It also filed a written acknowledgment of the receipt on November 18, 1914, of notice that this cause was set for hearing on the 1st day of December, 1914, said acknowledgment being signed by L. V. Colvin, clerk of the town of Petersburg, Indiana.

It also filed a similar acknowledgment, signed by two members of the board of trustees of said town, with their request that authority be granted the petitioner to issue said bonds.

The petitioner is a corporation operating and owning a telephone plant, with its principal place of business in the town of Petersburg, in Pike county, Indiana.

It has an exchange at Petersburg, with 440 telephones and an annual income of about seven thousand, two hundred (\$7,200) dollars; an exchange at Winslow with 300 telephones, and an annual income of three thousand, nine hundred (\$3,900) dollars; an exchange at Otwell, with 100 telephones, and an annual income of one thousand, nine hundred and twenty (\$1,920) dollars; an exchange at Monroe City with 270 telephones, and an annual income of three thousand, six hundred (\$3,600) dollars; and an exchange at Washington, Indiana, just being completed at the time of the hearing, with about 800 telephones installed and more than 200 additional ones being installed. The Washington exchange is a new automatic plant of high grade construction, on which more than one hundred thousand dollars have been expended, and the income from this exchange is estimated at about twenty-five thousand (\$25,000) dollars, annually.

The petitioner's valuation on the entire plant is two hundred and twenty thousand (\$220,000) dollars. The Commission has not valued the plant, but we consider its value to be greater than the amount of its bonds now outstanding, and which it asks authority to issue.

The authorized capital stock of the petitioner is one hundred and fifty thousand dollars, of which one hundred thousand dollars is common, and fifty thousand dollars is preferred, and it has issued and has outstanding twenty-eight thousand, three hundred (\$28,300) dollars, par value of preferred, and fifty-nine thousand, four hundred dollars (\$59,400), par value of common stock.

There are bonds of the petitioner now outstanding of the face value of fifty thousand (\$50,000) dollars; these bonds were authorized by this Commission on a previous petition.

The petitioner is now indebted to various parties in the sum of seventy-five thousand dollars. Said debts have been created wholly on account of new construction and equipment. About forty-six thousand dollars of said indebtedness is represented

by notes to various banks and individuals from whom the money was borrowed for the purpose of paying for said new extensions and betterments. The remainder of said indebtedness is in the nature of notes or open accounts in favor of parties from whom material and appliances have been purchased.

The money to be received from the sale of said bonds is to be used wholly in the payment of said debts.

Petitioner's operating expenses are not in excess of 50 per cent of its operating revenues.

The bonds which the petitioner desires to issue are a part of a series of twenty-year gold bonds, bearing 6 per cent interest, and secured by a first mortgage on all the property and plant of the petitioner.

It is now ordered by the Public Service Commission of Indiana, that the Pike County Telephone Company be and is hereby authorized to issue fifty thousand (\$50,000) dollars, face value, of its twenty-year gold bonds secured by a first mortgage on all of its property, said bonds to bear interest at the rate of 6 per centum per annum; they are to be sold for cash at par, plus accrued interest.

The proceeds from said sale shall be used to pay the indebtedness of said company, either notes or open accounts created in purchasing material, appliances, and supplies for new construction, extensions, and betterments in and to petitioner's plant or part thereof, and in constructing said extensions and betterments and installing said appliances and equipment. And said funds shall not be expended for any other purpose.

A report of the sale of said bonds and the payment of said debts shall be filed with this Commission, within ninety days; said report shall be verified by the president and secretary of the petitioning company.

On payment of a fee of seventy-five (\$75) dollars, to the state of Indiana, the secretary of this Commission is directed to issue a duly certified copy of this order to the petitioner as its authority to issue and sell said bonds.

As to the remainder of said bonds which the petitioner asks to issue, this case is continued.

INDIANA PUBLIC SERVICE COMMISSION.

IN RE JOINT PASSENGER TARIFF NO. 14 OF THE
CENTRAL ELECTRIC TRAFFIC ASSOCIATION.

[No. 1285.]

Interurban railroads — Rates — Joint passenger tariffs.

A joint passenger tariff of the Central Electric Traffic Association for interline passenger fares on interurban railroads in Indiana, Illinois, Kentucky, Michigan, and Ohio was approved by the Indiana Public Service Commission so far as they related to the state of Indiana, where they did not exceed the sum of the local fares of the two or more carriers over which said interline fares extended, and did not exceed 2 cents per mile for the distance actually covered by the interline fares.

[February 3, 1915.]

CONSIDERATION of joint passenger tariff No. 14 of the Central Electric Traffic Association; approved, so far as applicable to Indiana.

By the **Commission**: The Commission, having under consideration joint passenger tariff No. 14 of the Central Electric Traffic Association canceling joint passenger tariff No. 6 and supplements thereto, finds that said joint passenger tariff No. 14 has been on file in the Tariff Department of the Public Service Commission for more than thirty days; that said tariff affects interline passenger fares on interurban railroads in the states of Indiana, Illinois, Kentucky, Michigan, and Ohio; that the fares, rates, tolls, and charges fixed by said tariff between points on one interurban railroad and points on another interurban railroad are intended to be the sum of two or more local tariffs between said points, or a sum less the sum of the local tariffs, and in no case to exceed two cents (\$.02) per mile for the distance actually covered by said interline fares.

The Commission further finds and determines that said tariff and said rates, tolls, and charges therein fixed ought to be approved and made effective.

It is therefore ordered by the Public Service Commission of Indiana that the fares, rates, tolls, and charges as fixed in joint passenger tariff No. 14 of the Central Electric Traffic Association, and canceling joint tariff No. 6, also supplement thereto,

in so far as they relate to the state of Indiana, are now hereby approved and made effective from and after the 10th day of February, 1915. And the said several carriers participating in the issuing of the joint tariff, and each of them, are hereby authorized to charge and collect interline fares, tolls, and charges as set out in said joint passenger tariff No. 14, from and after said date. It is expressly understood, ordered, and provided, however, that in no case shall said interline fares exceed two (\$.02) cents per mile for the distance actually covered by said fares, and in no case shall said interline fares exceed the sum of the local fares of the two or more carriers over which said interline fares extend. And in case it be ascertained that any of said fares exceed two (\$.02) cents per mile, or exceed the sum of the local fares as above set out, a supplement shall be immediately filed correcting said fares to correspond to the provisions of this order.

MARYLAND PUBLIC SERVICE COMMISSION.

**T. J. HOOPER REALTY COMPANY, a Body Corporate, and
Others,**

v.

UNITED RAILWAYS & ELECTRIC COMPANY.

[No. 858.]

Street railroads — Extension of service.

A petition to extend the service of a street railroad company was dismissed where the extension asked was beyond the extreme end of the existing city fare zone, and the Commission had adopted a policy of not interfering with the boundaries of the fare zones pending investigation of company's affairs; and where it further appeared that the section requesting the service already had the benefit of three other car lines.

Street railroads — Compensation of extension of service.

An extension of service by a street railroad company and the extension of the fare zone will not be compelled by the Commission on the condition of compensation being made to the company, as the matter of extension for compensation is one for private treaty.

[February 5, 1915.]

PETITION for the extension of the service of a street railway company; dismissed.

By the **Commission**: The complainant in this case is a corporation engaged in the development of real estate in the suburbs of Baltimore on that part of Easton avenue lying between Eighth street and Fifteenth street, and it is asking that the respondent be compelled to extend the service of its Roland Park and Highlandtown line from its present terminus at Eighth street, down Eastern avenue to Fifteenth street. The petition is well supported by other persons living in that neighborhood, or interested in the property of that section. Eighth street is at the extreme end of the city fare zone, and, unless the circumstances be of exceptional character, the Commission has adopted the policy of not interfering with the present boundaries of the fare zones until such time as it shall have completed the investigation now being made of the respondent's affairs. Without an extension of the fare zone, we do not think that the continuation of the service to Fifteenth street would be of much practical benefit to the petitioners or to the public in general.

But there is another reason for not granting the prayer of this petition. The section in question is about as well served as any suburb in Baltimore. It has the benefit of three other car lines, the Dundalk-River View line, the Back & Middle Rivers line and the Sparrows Point line, all touching at Fifteenth street and Eastern avenue, while the Dundalk line, at intervals of a half hour, runs on Eastern avenue between Fifteenth street and Eighth street. We think this, for the present, is adequate service for the people, and all that can now be expected of the railway company.

The suggestion of Mr. Brooks, one of the witnesses in the case, that the company, if it should extend the fare zone and continue the Roland Park and Highlandtown cars to Fifteenth street, should in some way be compensated therefor, is rather a matter for private treaty than for compulsion by this Commission.

It is, therefore, this 5th day of February, 1915, by the Public Service Commission of Maryland,

Ordered, that the petition in these proceedings be, and the same is hereby, dismissed.

E. Clay Timanus, W. Laird Henry, Commissioners.

MASSACHUSETTS PUBLIC UTILITIES COMMISSION.
IN RE UNITED ELECTRIC LIGHT COMPANY OF
SPRINGFIELD.

Securities — Stock issue to retire notes.

The issue by an electric light company of 2,500 shares of new capital stock at \$185 per share was approved, the proceeds to be applied to the payment and cancelation of an equal amount of the obligations of the company, represented by its promissory notes outstanding on a specified date, where it appeared that the net (uncapitalized) expenditures for additions to plant prior to such specified date exceeded the amount which would be realized from the sale of such stock.

[February 2, 1915.]

APPLICATION for approval of an issue of additional capital stock; granted.

By the Commission: This is an application by the United Electric Light Company of Springfield for the approval of an issue of additional capital stock of the par value of two hundred and fifty thousand dollars (\$250,000) for the payment of liabilities now or hereafter incurred for additions and extensions to its plant and property.

On October 31, 1914, the company had outstanding promissory notes to the amount of \$685,000. Its accounts show that its net expenditures for additions to plant between February 28, 1913, and October 31, 1914, have been \$895,324. For this purpose \$105,000 were provided from the proceeds of the last issue of stock and of the balance the amount hereinafter approved may be properly represented in capital stock.

The following is therefore adopted:

On the petition of the United Electric Light Company of Springfield, pursuant to the provisions of § 39 of chapter 742 of the Acts of the year 1914, for the approval of an issue of additional capital stock of the par value of two hundred and fifty thousand dollars (\$250,000) for the objects named in said petition, after public notice and hearing, it being deemed by the Board that said amount of stock is reasonably necessary for the purpose for which such issue is authorized, it is

Ordered, that the board hereby approves of the issue by the United Electric Light Company of Springfield, in conformity with all the requirements of law relating thereto, at the price

of \$185 a share, as determined by its directors, of twenty-five hundred (2,500) shares of new capital stock of the par value of \$100 each; the proceeds thereof to be applied to the payment and cancelation of an equal amount of the obligations of the company represented by its promissory notes outstanding on October 31, 1914, and to no other purpose.

And if any shares shall remain unsubscribed for by the stockholders entitled to take them under the provisions of law relating thereto, it is further—

Ordered and determined by the board that all such shares shall be offered for sale at some suitable place in the city of Springfield, and that notice of the time and place of such sale shall be published in the "Boston Daily Advertiser," a newspaper published in the city of Boston, and in the "Springfield Daily Republican" and the "Springfield Daily Union," newspapers published in the city of Springfield.

NEW JERSEY PUBLIC UTILITY COMMISSION.

IN RE WILDWOOD, ANGLESEA, & HOLLY BEACH GAS COMPANY.

Apportionment — Unit costs — Gas.

In estimating the costs of gas service in order to determine the reasonableness of a proposed minimum charge, certain expenses, such as commercial administration, work on consumers' premises, salaries, and expenses of general offices and general office clubs, general office supplies expenses, and miscellaneous general expenses, should be apportioned in accordance with the extent to which they are proportionate to the number of customers or to the demand on the plant, rather than placed in one class or the other without attempt at division.

Apportionment — Gas costs — Demand units.

The number of demand units for gas service should be determined with reference to the relative capacities of the different meters in use, rather than with reference merely to the number of meters in use.

Rates — Cost of service — Fixed charges.

In order to avoid discrimination each customer of a gas company should pay at least the amount of expenses of the company per annum which are proportionate to the number of customers, and in addition thereto each customer, including the customer who has the smallest meter in use, should pay the amount of the demand unit, in order to bear his share of the fixed expenses.

Rates — Gas — Minimum charge.

A gas company which was not in position to pay any dividends on its stock, but which had been able to pay interest on its bonds, was allowed to establish a minimum charge of 75 cents per month applicable whenever the premises are occupied, upon ample notice from the consumer.

[January 18, 1915.]

PETITION for approval of a minimum charge of \$1 per month for gas service; authority granted to establish a minimum charge of 75 cents per month.

Appearances: Theodore J. Grayson for the petitioner; Harrison H. Voorhees for Wildwood.

Donges, President: Under date of December 23, 1913, the Wildwood, Anglesea, & Holly Beach Gas Company filed a petition praying for the approval of a minimum charge of \$1 per month. This charge was to apply on each month when the premises were occupied.

Notification of the hearing was sent to the borough clerk of Wildwood Crest, the city clerk of Wildwood, and the borough clerk of North Wildwood.

The only citizen who appeared was Mr. George W. Rogers, whose testimony did not materially assist in the consideration of the matter under discussion.

At the first hearing, testimony was offered showing the number of prepayment meters containing amounts of money less than \$1, and statements were filed (Exhibits P-1 and P-4) giving the data for the months of December, 1913, and January, 1914, for each customer who would be affected by the institution of a minimum charge.

Testimony was also submitted showing the revenues and operating expenses of the company.

Analysis of the figures shows that the company is not in a position to pay any dividends on its stock, although interest has been paid on the bonds for some short time past. The indications are that the institution of a minimum charge would add somewhat to the revenues of the company, but not in sufficient amount to greatly affect the gross revenues.

The testimony submitted by the auditor of the company on March 4th was not in such form as would be suitable in determining the justice and reasonableness of a minimum charge, and further data was submitted by the auditor on April 28, 1914.

In the statement submitted at that time an attempt has been made to classify the expenses under three general classes; the first class including those expenses which are proportional to the number of customers; the second class including those expenses which are proportional to the demand made upon the plant of the company; and the third class of expenses being those which are proportional to the amount of gas used or sold. The statement as filed purported to omit the third class of expenses.

Analysis of this tabulation, which is given as Exhibit R-2 of April 28th, shows that some items have been included under class 2 which properly belong under class 3. The following table is the tabulation as submitted by the company:

TABLE I.
Expenses in Connection with Service to Consumers:

Item	Expenses in proportion to number of consumers	Proportion to demand (Plant)
Profit (\$5 on \$367,905.20) -----		\$29,432.41
Taxes -----		1,489.03
Insurance -----		598.91
Stationery and Printing -----	387.55	
Commercial Administration -----	2,885.81	
Business promotion -----	345.22	
General Law expenses -----	13.20	
Repairs Meters -----	26.10	
" services -----	128.00	
" mains -----		94.10
" tools -----		1.20
Meters Installations -----	88.36	
Work on Consumers' premises -----	640.62	
Distribution supplies and expenses -----	60.11	
" Superintendence -----	20.00	
Salaries and expenses General officers -----	384.73	
" " " " office clerks -----	138.70	
General office supplies and expenses -----	87.60	
Miscellaneous General expenses -----	318.06	
Repairs General Structures -----		7.55
" Boilers -----		114.44
" Engines -----		65.21
" Water Gas Sets -----		243.68
" Purification Apparatus -----		3.35
" Holders -----		127.33
" Misc. Equipment -----		41.87
Depreciation, say 6 % per M. on 31,415,900 cu. ft. -----		1,884.95
Consumers 2,739 -----	\$5,524.06	\$34,104.78 ¹
Per consumer per annum -----	2.02	
" " " month -----	1.7	
" demand unit per annum -----		12.45
" " " month -----		1.04
Basis on which \$1 per month minimum is asked.		

¹ Figures correctly transcribed. Error is found in original Exhibit.

This exhibit has been carefully analyzed by Mr. Betts, the Engineer of the Board, and it has been rearranged in accordance with his views regarding the proper method of classifying the various expenses. It should be noted that hardly any two persons will classify these expenses in exactly the same way, but the company's auditor, Mr. Lightfoot, has taken each item of expenses, and has placed it in one or the other class without attempting to divide it.

On the other hand, Mr. Betts has divided certain items of expense in accordance with his opinion as to what extent the expenses are proportionate to the number of customers or to the demand on plant, as may be the case with each item. His tabulation of the various items of expense for the year 1913 is as follows:

TABLE II.
Expenses in Connection with Service to Consumers.

Item	Expenses in proportion to number of consumers	Proportion to demand (Plant)	Proportionate to Output
Returns 7 % on \$335,000 -----		\$23,450.00	
Taxes -----		1,489.03	
Insurance -----		598.91	
Stationery and Printing -----	\$387.55		
Commercial Administration -----	1,885.81	1,000.00	
Business promotion -----	345.22		
General Law expenses -----	13.20		
Repairs meters -----	26.10		
" services -----	128.00		
" mains -----		94.10	
" tools -----		1.20	
Meters Installations -----	88.86		
Work on consumers premises -----	300.00	\$40.62	
Distribution supplies and expenses -----		60.11	
Distribution superintendence -----		20.00	
Salaries and expenses general officers -----	184.73	200.00	
Salaries and expenses general office clerks -----	100.00	38.70	
General office supplies and expenses -----	40.00	47.60	
Miscellaneous general expenses -----	118.06	200.00	
Repairs General Structures -----			\$7.55
" Boilers -----			114.44
" Engines -----			65.21
" Water Gas Sets -----			243.68
" Purification Apparatus -----			3.35
" Holders -----			127.33
" Miscellaneous Equipment -----			41.87
Depreciation—say 6 % per M. on 31,415,900 cu. ft. -----			
	\$3,617.03	\$29,425.22	\$603.43
Per consumer per annum -----	1.32		
" demand unit per annum -----		7.98	
Demand units—3,683.			

It will be noted that the term "demand unit" is used in these tables. In the one prepared by the company's auditor the same figure has been assumed for the number of demand units as for the number of meters in use. This ignores the fact that the demand will be greater for larger consumers than for small consumers.

The Board's engineer has prepared a table in order to determine the number of demand units. This is made up by reference to the relative capacities of the different meters in use. This table is given below:

TABLE III.
Calculation of Demand Unit.

Size	² Number	Cap.	Demand Units.	Total Demand Units.
3	1,356	60	1.	1,356
5	1,320	100	1.67	2,204
10	37	130	2.16	80
20	4	234	4.	16
30	1	294	5.	5
45	2	423	7.	14
60	1	480	8.	8
	2,721			3,683

As of July 1, 1913.

² Does not include meters in storeroom.

By reference to table II. it will be noted that the Board's engineer is of opinion that the expenses which are proportionate to the number of customers amount to \$1.32 per year. In order to avoid discrimination in favor of some as against others, undoubtedly each customer should pay at least this amount per annum. From table III. it will be noted that the total number of demand units as of July 1, 1913, when 2,721 meters were in use was 3,683. From table II. it is noted that the expenses, which are in proportion to the demand, amount to \$7.98 per demand unit, or in other words, the customer who has the smallest meter in use should pay the sum of \$7.98 per annum in addition to the charge of \$1.32, in order to pay his fair share of the fixed expenses of the company. This total is as follows:

Class I., expenses	\$1.32
Class II., "	7.98

Total per Annum

\$9.30

The minimum imposed upon the user of the smallest amount of gas ought not exceed \$9.30 if the above classification is approximately correct.

The company's petition is for the approval of a minimum charge of \$1 per month, applicable in those months when the consumer's premises are occupied. Under this method, if the premises were occupied for less than one month, the minimum would not exceed \$1, which, it will be seen, is inadequate to compensate the company for the expenses involved in connection with the work of connecting and disconnecting service, reading the meters, bookkeeping, and various other absolutely necessary expenses. On the other hand, if the minimum charge of \$1 per month was to apply for each month of the year where the premises are occupied continuously, it will be noted that the minimum charge would then probably be in excess of the necessary minimum. An average of 75 cents per month for the whole year would probably be sufficient to compensate the company for any ordinary case which might arise.

The Board is of opinion that the institution of a minimum charge of \$1 per month is, under all the circumstances, not necessary, and is unreasonable, and hereby fixes as reasonable a minimum charge of 75 cents per month, applicable whenever the premises are occupied, of which fact the company is to have ample notice from the consumer.

Board of Public Utility Commissioners, by Ralph W. E. Donges, President.

Note.—The propriety of permitting a gas company to fix a minimum charge is generally recognized.

Thus, in *Re North Adams Petition* (1912) 27 Mass. G. & E. L. C. R. 17, the Commission, at page 22, says: "With respect to the minimum monthly charges for gas and electric lighting, the money value of these charges is not important to the company. No such charge had been made by the former management. The company had been, and would probably continue to be, prosperous without it. It is supported by the claim that the readiness of the company to supply is a convenience to the customer, and a service which has value even though he may not actually use the light, and that such service is of some cost to the company, which ought not to be required to render any service at a loss. The statutes appear to indirectly recognize the legality and justice of some charge in the

case of the gas supply, but make no attempt to determine its fair and reasonable amount. It is, under any conditions, extremely difficult to determine the cost of such service. It may, indeed, be impossible to determine it in any individual case. If any such charge is to be made, its amount must, therefore, be determined somewhat arbitrarily with reference to other considerations rather than its cost. While it is doubtless true that any public-service company may sometimes be legally and reasonably required to render certain services without a demonstrable profit, or even at less than the apparent cost, to require a company to give any service continuously or repeatedly at an obvious loss would be manifestly unjust and inexpedient. When any amount of gas or electricity is used for which the customer pays, the company receives some return, and while it may be impossible to show that such return is an adequate one, it may be equally difficult to prove that the service has been rendered at a perceptible loss."

And in *Re Green Bay Gas & Electric Co.* (1910) 5 Wis. R. C. R. 101, the Commission, at page 105, says: "The chief argument for the minimum charge appears to be that it simply covers certain items in the operating expenses of the plants, that in the ordinary rate schedules cannot be covered in any other way. Where no minimum charge is made, the company is compelled to carry considerable dead investment and to incur other expenses for those consumers who pay nothing or very little to the company; and that, where such costs are not borne by the consumers for whom they are incurred, they usually have to be carried by other consumers, and are, therefore, in a sense discriminatory."

So, also, in *Ripon v. Ripon L. & W. Co.* (1910) 5 Wis. R. C. R. 1, the Commission, at page 41, says: "Under meter rates, revenue is available only when current is used, and it is a common experience that many customers do not use sufficient current to incur a bill large enough to meet the fixed expenses alone. A minimum bill, therefore, is both necessary and just." This was said with reference to a minimum charge for electricity, but later in the opinion the Commission says that the same principles apply in the case of gas.

But, it has been held that where the rate is fixed by franchise, statute, or ordinance, the gas company cannot charge a meter rent when consumption does not reach a certain minimum amount per month in order to bring the bills up to that amount. *Montgomery Light & Water Power Co. v. Watts*, 165 Ala. 370, 26 L.R.A. (N.S.) 1109, 138 Am. St. Rep. 71, 51 So. 726.

So, in *Louisville Gas Co. v. Dulaney*, 100 Ky. 405, 36 L.R.A. 125, 38 S. W. 703, where it appeared that the gas company was required by its charter to furnish gas to its consumers at a fixed rate per thousand cubic foot, it was held that the company could not impose an additional charge designated as meter rent, on consumers who failed to use 500 cubic feet of gas in a month.

In *Buffalo v. Buffalo Gas Co.* 81 App. Div. 505, 80 N. Y. Supp. 1093, it appeared that a uniform rate to be charged for gas was voluntarily fixed by agreement with the city council, and that thereafter the company fixed minimum rates per month regardless of the quantity of gas consumed. But the court held that this was a violation of the state statute which provided that "no gaslight corporation in this state shall charge or collect rent on its gas meters either in a direct or indirect manner."

In *State ex rel. Weise v. Sedalia Gaslight Co.* 34 Mo. App. 501, it was held that a rule of the company requiring the consumers to pay a minimum amount where the value of gas used was less than that amount did not violate the terms of the franchise ordinance which provided that the gas company should furnish to the inhabitants of the city "gas at a price per cubic foot not exceeding the rate charged in similarly situated places."

OHIO PUBLIC UTILITIES COMMISSION.

IN RE APPLICATION OF THE CANTON ELECTRIC
COMPANY.

[No. 403.]

Security Issues — Bonds — Reimbursement for betterments.

An electric company was authorized to issue first and refunding mortgage 5 per cent sinking fund gold bonds to the amount of \$115,000, and to sell the same at not less than 85 per cent of the par value thereof, plus accrued interest, in order to reimburse its income account for money actually expended therefrom for extensions, improvements, and betterments.

[January 19, 1915.]

APPLICATION for permission to issue bonds; **granted.**

By the **Commission:** The Canton Electric Company, a corporation duly organized and existing under and by virtue of the laws of the state of Ohio, having, on the 10th day of December, 1914, filed its petition praying for the consent and authority of the Public Utilities Commission of Ohio to the issue by said the Canton Electric Company of its first and refunding mortgage 5 per cent sinking fund gold bonds of the total principal sum of \$115,000, the proceeds to be used to reimburse petitioner's income for moneys actually expended therefrom during a period

of thirteen months ending October 31, 1914, for the construction of additions, extensions, improvements, and betterments to the plant and system of said the Canton Electric Company, as fully set out in said petition and exhibits attached thereto, and the time for hearing said matter having been fixed for Wednesday, December 16, 1914, at 2:30 o'clock p. m., and due notice of the time and place of said hearing having been given, and having been heard on said day, and the further consideration thereof continued from day to day, the same came on this day for final consideration upon the petition, the evidence, and exhibits.

After considering the pleadings, hearing the evidence, and examining the exhibits, and being fully advised in the premises, and it appearing that the proceeds of said bonds are to be devoted to the reimbursement of petitioner's treasury for moneys heretofore actually expended therefrom for the construction, completion, extension, and improvement of petitioner's plant and system, the Commission is satisfied that the prayer of said petition should be granted. It is therefore

Ordered, that said the Canton Electric Company be, and it is hereby, authorized to issue its first and refunding mortgage 5 per cent sinking fund gold bonds of the total principal sum of one hundred and fifteen thousand dollars (\$115,000), and that said bonds be sold for the highest price obtainable, but for not less than eighty-five (85) per cent of the par value thereof plus accrued interest, it being the opinion and finding of the Commission that the money to be secured by the issue of said bonds is reasonably required for the proper purposes of said corporation. It is further—

Ordered, that the proceeds arising from the sale of said first and refunding mortgage 5 per cent sinking fund gold bonds be, by said the Canton Electric Company, devoted to and used for the partial reimbursement of its treasury for moneys, aggregating the sum of one hundred and forty-four thousand, nine hundred and ninety-eight dollars and one cent (\$144,998.01) actually expended therefrom during the thirteen months ending October 31, 1914, for additions, extensions, improvements, and betterments to its plant and system, as the same is fully set out in a detailed statement attached to the petition herein and marked

for identification "Exhibit A," which said "Exhibit A" is hereby made a part of this order by reference, nor shall said proceeds of said bonds be used for any other purpose whatsoever. It is further

Ordered, that said the Canton Electric Company make verified report to this Commission, as follows: Upon the issue and sale of said first and refunding mortgage 5 per cent sinking fund gold bonds, or any part thereof, the fact of such issue and sale, the terms and conditions of sale, and the amounts realized therefrom, which shall be the highest price obtainable, but which shall not be less than eighty-five (85) per cent of the par value thereof plus accrued interest; on or before the 15th day of April, 1915, for the period ending March 31, 1915, and thereafter at quarterly intervals, the disposition and use made of the proceeds of said bonds, setting forth in reasonable detail the purposes for which proceeds have been expended, such reports to be made until all of said bonds herein authorized have been issued and disposed of, and all the proceeds thereof expended pursuant to the terms and conditions of this order.

The Public Utilities Commission of Ohio, O. H. Hughes, Chairman; C. C. Marshall, E. W. Doty, Commissioners.

Note.—The Commission in *Re Bucyrus Light & P. Co. No. 419*, decided January 19, 1915, granted an application of the company for permission to issue its first mortgage 5 per cent bonds of the total principal sum of \$41,000, to be sold at the highest price obtainable, but for not less than 80 per cent of the par value thereof, from the proceeds thereof, \$12,000 to be used for the payment and discharge of obligations incurred in the construction of additions, extensions, improvements, and betterments to its plant and system from January 1, 1911, to December 31, 1913; \$29,000 to be applied to the payment for the construction of proposed additions, extensions, improvements, and betterments of the petitioner's property.

In *Re Marion Water Co. No. 413*, decided January 20, 1915, the Commission authorized the company to issue promissory notes to the amount of \$60,000 to be sold at par, the proceeds to be devoted to the purchase of material and the construction, completion, extension, and improvement of the petitioner's plant and facilities.

In *Re Ohio Traction Co. No. 421*, decided January 25, 1915, the petitioner was authorized to issue its 6 per cent gold coupon notes of the total principal sum of \$1,500,000, to be sold at not less than

95 per cent of the par value thereof, the proceeds to be devoted to the purposes prescribed by the Public Service Commission of Ohio, now the Public Utilities Commission of Ohio, in its orders of November 15, 1912, and November 13, 1913, in proceedings entitled, "In the Matter of the Application of the Ohio Traction Company for Authority to Issue \$750,000 preferred Capital Stock," and numbered No. 409, and "In the Matter of the Application of the Ohio Traction Company for Consent and Authority to Issue and Sell \$300,000 par Value 5 per cent preferred Capital Stock" and numbered No. 416, and in addition thereto for the acquisition of property and the construction, completion, extension, and improvement of petitioner's system and facilities.

For opinions of the attorney for the Commission upon the Commission's powers and jurisdiction in the matter of security issues by public utilities, see: *Re Issue of Bonds in Excess of Amount of Capital Stock*, 1 Ann. Rep. Ohio P. U. C. pp. 472 & 473; *Re Commission's Power to Revoke, Modify, or Rescind Orders Authorizing the Issue of Securities*, 1 Ann. Rep. Ohio P. U. C. pp. 480-482, inc.; *Re Commission's Jurisdiction over Security Issues by Companies Doing an Interstate Business when the Proceeds are to be Used for the Acquisition of Property outside the State, etc.*, 1 Ann. Rep. Ohio P. U. C. pp. 484-486, inc.

WISCONSIN RAILROAD COMMISSION.

JOHN H. ALLEN SEED COMPANY

v.

CHICAGO & NORTHWESTERN RAILWAY COMPANY AND CHICAGO, MILWAUKEE, & ST. PAUL RAILWAY COMPANY.

Railroads — Rates — Factors to be considered — Increased use.

A railroad was ordered to substitute a local rate schedule for the local rates charged between shipping and receiving points on its line, on the ground that the rates in effect seemed higher than the character and volume of business called for, in view of the fact that the greater expansion which would follow a moderate reduction would benefit the carriers as well as the communities.

Railroads — Rates — Factors to be considered — Increased use.

Two connecting railroads were ordered to substitute a reduced joint rate schedule for the joint rates in force between certain points on their lines, on the ground that the rates in effect seemed higher than the character and volume of business called for, in view of the fact that the

greater expansion which would follow a moderate reduction would benefit the carriers as well as the communities.

Railroads — Request for reparation dismissed.

A request by a petitioning shipper for reparation in such sum as the Commission should find charges paid in excess of reasonable charges was dismissed, where it appeared that the petitioner's business had shown a steady increase in volume covering the period during which the rates complained of had been in force.

[January 28, 1915.]

PROCEEDING for rate revision and reparation: petition granted in part.

Appearances: O. M. Rogers for petitioner; J. M. Davis for the Chicago, Milwaukee, & St. Paul; and R. H. Widdecombe for the Chicago & Northwestern Railway Company.

By the Commission: The petitioner in this case, the John H. Allen Seed Company, in its complaint alleges that it has been engaged for a number of years in growing peas in considerable quantities at London, Lake Mills, Belgium, Port Washington, Rockfield, St. Cloud, Sun Prairie, Deansville, Marshall, Waterloo, Poynette, Rio, Columbus, Cedarburg, Menomonee Falls, South Germantown, Thiensville, Chilton, and New Holstein, all of which points are located in the state of Wisconsin, which product is brought into Sheboygan, where the petitioner's place of business is located, by the respondent carriers; and that it has made various shipments of peas and beans for seeding purposes from Sheboygan to the points above named, and that the rates charged by the respondent companies on both in and out shipments are unreasonable, excessive, and unjust. The charge made by the petitioner applies to both earload and less than earload shipments, and to joint as well as one-line rates. The Commission is asked to establish local rates on a commodity basis, in so far as shipments moving entirely over the line of the Chicago & Northwestern Railway is concerned, to be as low as those recently established from London to Sheboygan. The Commission is asked further to establish or cause to be established joint rates on such traffic as originates on the rails of the Chicago, Milwaukee, & St. Paul Company and is destined to Sheboygan, and likewise to establish joint rates on such traffic as originates at Sheboygan and is destined to the various sta-

tions enumerated above. The petitioner also asks reparation in such sum as the Commission shall find the charges paid are in excess of reasonable charges.

After due notice a hearing was held in the case in the office of the Railroad Commission in Madison on August 4, 1914. O. M. Rogers appeared for the petitioner, J. N. Davis for the Chicago, Milwaukee, & St. Paul Railway Company, and R. H. Widecombe for the Chicago & Northwestern Railway Company.

The testimony given at the hearing covered in detail the business and traffic methods of the petitioner. This business is rather unique in character. The petitioner company maintains its office in Sheboygan, but contracts with farmers at the score or more points named as shipping and receiving points, to raise peas, and, on a smaller scale, beans. The petitioner first ships to the farmers the necessary seed for the number of acres contracted to be planted or sown. When the crop begins to grow the petitioner sends crews of men out to "rogue" the growing crops for the farmers; that is, to clean out the weeds and abnormal growths in order to secure as clean a seed crop as possible. The farmers are paid so much per bushel for their crops, part of these being sold green to canning establishments by the petitioner, and the balance shipped when harvested ripe to the petitioner. Then the same process with the farmers is gone over again. The shipping forth and back of the seed and the crop, beside the shipment to eastern and southern points of seed, thus amounts to a large traffic.

The rates per hundred pounds charged the petitioner range from 7 cents to 15 cents on carload lots, and these rates and joint rates charged are the ones complained of as being excessive and unreasonable. The substance of the petitioner's contention is that, because of the large volume of business it gives the respondent carriers, and because the chief portion of the crop contracted for is shipped first to Sheboygan for sorting and cleaning, therefore, it is entitled to commodity rates or something in the nature of concentration rates. The petitioner does not keep large stocks on hand in Sheboygan, but instead keeps the

product moving forth and back from the farmers, and out to the ultimate markets in the East and South. Its products are distinctly live commodities.

The business of the petitioner has been carried on for a number of years with a steady increase in its volume. The rates charged by the respondent companies have remained unchanged for several years, excepting a change noted in a recent Chicago & Northwestern tariff in the rate from London to Sheboygan.

These rates seem somewhat higher than the character and volume of the business call for, in view of the fact that the greater expansion which would follow a moderate reduction would benefit the carriers as well as the score or more of communities named. The fact, however, that the petitioner's business shows a steady increase in volume covering the period during which the rates complained of have been in force, leaves little ground upon which to base a claim for a refund to the petitioner.

After carefully considering both the cost of the service to the carriers and the commercial conditions affected by the traffic, the Commission is of the opinion that both the one-line rates and the joint rates charged the petitioner are higher than they should be, and that the rates shown in the accompanying table (No. I.) will more nearly meet the demand for just and reasonable rates:

TABLE I.

Between Sheboygan and	Cents per cwt.
Belgium	6.
Port Washington	6.5
St. Cloud	6.5
Rockfield	8.
Lake Mills	10.1
London	10.51

¹ East bound commodity rate of 8½ cents now in force to Sheboygan.

It is therefore ordered that the rates named in the above table be substituted for the local rates now charged between Sheboygan and the shipping and receiving points on the Chicago & Northwestern Railway named.

It is further ordered that the joint rates named in the following table (table II.) be substituted for the rates now in force between the points named:

TABLE II.

Joint Rates

Between Sheboygan and	Cents per cwt.
New Holstein	7.5
Chilton	8.
Cedarburg	8.5
Thiensville	8.9
Menominee Falls	9.
Germantown	9.
Waterloo	10.5
Marshall	10.5
Columbus	10.5
Deansville	10.5
Sun Prairie	11.
Rio	12.
Poynette	13.
Less than carload local (single line) 4th class	
Carload " " " class B.	

It is further ordered that the request for reparation be dismissed.

Dated at Madison, Wisconsin, this 28th day of January, 1915.

Railroad Commission of Wisconsin, by Halford Erickson,
John H. Roemer, David Harlowe, Commissioners.

Note.—The probability of increased business was also considered in *Willcox v. Consolidated Gas Co.* (1909) 212 U. S. 19, 51, 53 L. ed. 382, 399, 48 L.R.A.(N.S.) 1134, 29 Sup. Ct. Rep. 192, 15 Ann. Cas. 1034; *Fuhrmann v. Cataract Power & Conduit Co.* (1913) 3 P. S. C. (2d D. N. Y.) 656, 738, and *Potee v. Brooklyn & C. B. Light & Water Co.* (Md.) ante, 42.

WISCONSIN RAILROAD COMMISSION.

A. E. FREDERICK

v.

CHICAGO, ST. PAUL, MINNEAPOLIS, & OMAHA RAILWAY
COMPANY and CHICAGO, MILWAUKEE, & ST. PAUL
RAILWAY COMPANY.

Service — Railroads — Adequate station facilities.

Connecting railroads were ordered to provide a suitable building and proper approaches at a railway junction point, where it appeared that the average daily passenger traffic was nearly four times the existing building's seating capacity, and freight and express had to be often

placed in the passenger waiting room on account of the insufficiency of the freight room.

[January 29, 1915.]

PROCEEDING to secure additional station and depot facilities, at railway junction; suitable and adequate building for freight and passenger traffic; ordered.

Appearances: A. E. Frederick for himself; H. H. Ober for the Chicago, Milwaukee, & St. Paul Ry. Co. and F. E. Nicoles for the Chicago, St. Paul, Minneapolis, & Omaha Ry. Co.

By the **Commission**: The petition alleges in substance that the joint station maintained by the Chicago, St. Paul, Minneapolis, & Omaha Railway Company and the Chicago, Milwaukee, & St. Paul Railway Company at Valley Junction in Monroe county is inadequate. The Commission is therefore asked to take such action as it deems just in the premises.

The Chicago, St. Paul, Minneapolis, & Omaha Railway Company in its separate answer alleges that the joint station facilities at Valley Junction are adequate for the business offered.

The Chicago, Milwaukee, & St. Paul Railway Company in its separate answer likewise alleges that the joint station facilities are adequate, and asks that the petition be dismissed.

A hearing was held at Valley Junction on October 1, 1914. A. E. Frederick appeared in his own behalf, H. H. Ober for the Chicago, Milwaukee, & St. Paul Railway Company, and F. E. Nicoles for the Chicago, St. Paul, Minneapolis, & Omaha Railway Company.

The testimony shows the joint station is located in the southeast angle of the crossing of respondents' railway lines. The building contains a passenger waiting room in the shape of an L, the dimensions of the two rectangles being 7 feet, 4 inches by 19 feet, 4 inches, and 7 feet by 9 feet, 7 inches, respectively. The ceiling is 11 feet, 10 inches high. The dimensions of the freight room are 9 feet, 7 inches by 18 feet, 7 inches. Seats for twelve person are installed in the waiting room.

Witnesses for the petitioner stated that frequently all the seats are occupied, and some passengers are obliged to stand, and that occasionally the room is so crowded that even standing room under shelter is not available. The latter condition rarely occurs except during August and September, when cranberry pickers

use the station in large numbers. It was said that freight and express are frequently placed in the passenger waiting room for shelter, owing to the insufficiency of the freight room. The station agent testified that on the average twenty to thirty people take the train at Valley Junction, and that there are usually ten or fifteen persons during the day waiting to see friends off or meet them. He said that on special occasions he has seen eighty or ninety people waiting for a train at one time. The waiting room is usually filled beyond its seating capacity two or three times a week, and the freight to be stored exceeds the capacity of the freight room two or three times a week, according to his testimony. He admitted that express and freight are occasionally placed in the waiting room, and that goods stored in the station have been damaged by rats and mice.

Witnesses for the petitioner also complained that the driveway to the station from the highway is narrow and too low as compared with the height of the platform upon which freight must be loaded, and that a telephone pole is so located as to make it difficult to turn a wagon around after driving in. This testimony was substantially corroborated by the station agent.

Data with reference to traffic conditions which were submitted by the railway companies are summarized in the following table:

Month	C. M. & St. P. Ry. Co.			C. St. P. M. & O. Ry. Co.			Total revenue both companies
	No. of tickets sold	Revenue from ticket sales	Freight revenue	No. of tickets sold	Revenue from tickets sold	Freight revenue	
July 1913	317	\$45.55	\$276.37	340	\$144.71	\$42.21	\$508.84
August "	493	91.45	141.41	341	167.64	75.75	976.25
September "	647	120.49	247.74	388	224.23	67.94	660.40
October "	403	77.70	816.99	363	180.18	192.62	1,267.49
November "	288	76.59	295.04	239	104.61	104.97	581.21
December "	315	59.10	325.59	301	139.54	194.89	719.12
January 1914	247	43.24	202.62	226	87.58	70.92	404.36
February "	182	28.87	70.90	217	89.19	124.46	313.42
March "	266	48.05	296.40	290	133.73	187.80	665.93
April "	284	47.37	235.34	293	119.01	159.28	561.00
May "	245	40.71	220.00	214	102.22	104.36	467.29
June "	328	59.85	122.56	331	148.96	79.02	410.39
Total -----	4,015	\$738.97	\$3,250.96	3,543	\$1,641.60	\$1,404.22	\$7,035.75

These data indicate that a total of 7,558 tickets were sold during the year, or an average of 21 per day. It is probable that as many passengers return as buy tickets out of Valley Junction, and the average passenger traffic may therefore be estimated as about 42 per day throughout the year.

The representatives of the railway companies stated that they are willing to remove the telephone pole of which complaint was made, and to raise the grade of the roadway $1\frac{1}{2}$ or 2 feet so that the floor of wagons will be on the same level as the freight platform.

In the light of the testimony and upon investigation, it is our opinion that the station facilities at Valley Junction are inadequate. The traffic is sufficient to warrant separate waiting rooms for men and women, and a more capacious room is needed for the storage of freight. Efforts should be made to protect goods stored in the station from rats and mice. The improvements in the approach to the station suggested by the respondents should be made.

It is therefore ordered that the respondents, the Chicago, St. Paul, Minneapolis, & Omaha Railway Company and the Chicago, Milwaukee, & St. Paul Railway Company, provide a suitable building at Valley Junction, which shall be adequate for freight and passenger traffic, plans to be submitted to the Commission for approval.

June 1, 1915, is considered a reasonable date at which the station shall be completed and open for the use of the public.

Railroad Commission of Wisconsin, by David Harlowe, John H. Roemer, Halford Erickson, Commissioners.

WISCONSIN RAILROAD COMMISSION.

IN RE CLARK COUNTY TELEPHONE COMPANY.

Rates — Increase — Financial requirements.

A telephone company was authorized to increase its rates on the ground that the present rates did not meet the required demands for adequate service and provide a satisfactory return upon the investment, it appearing upon an analysis of its accounts that the probable total excess of revenues over expenses under the proposed rates would be reasonably needed to take care of its financial requirements.

Interest and depreciation — Allowance.

Provision for interest and depreciation amounting to about 14 per cent of the cost new of a telephone property was allowed by the Commission as reasonable in a rate investigation without definitely fixing the fair value of the property, in view of the apparently excellent condition of the telephone system.

Service — Rule — Exchange limits.

A rule of a telephone company that the exchange limits shall be the village or city limits where exchanges are operated was approved, it being taken to indicate merely the division line between local and rural service, and not that a toll will be charged between the various cities and villages.

Rates — Rule — Rural-line service.

A rule of a telephone company that rural service over trunk lines between central offices shall be free to subscribers, but if used by nonsubscribers shall be subject to the regular toll fee, was approved.

Rates — Rule — Penalties.

A rule of a telephone company that its rates for local and rural service shall apply when payments are made on or before the 20th of the month following the month for which service is rendered, and that there shall be a penalty of 25 cents per month for delinquent payments for such service, was approved.

Rates — Rule — Institutions not operated for profit.

A rule of a telephone company that charitable institutions, public and parochial schools, armory, public library, churches, and fraternal societies shall be classed as and carry rates and privileges of individual line residences, except as to joint-user privileges, was approved.

Rates — Rule — Contract periods.

A rule of a telephone company that its rates are quoted for service extending over a period of one year, and that such rates are offered with the understanding that the company has facilities to provide the service at the location desired, was approved.

Rates — Rule — Suspended service.

A rule of a telephone company that subscribers who may wish to suspend service for a portion of the year during absence from the community may do so upon payment of one half the regular net rate for the period of suspension, and that in no case shall an allowance be made for a period of less than one month, was approved.

Service — Rule — Listing — Telephone directory.

A rule of a telephone company that in all cases the telephone instrument shall remain in place without service, or hold its original listing in the directory, was approved.

Service — Rule — Joint user.

A rule of a telephone company that joint user shall include any and all service not specified by the main line listing, and that one main and one joint user may be served on one main line unless the main-line subscriber should desire the joint-user rate to cover his own additional business, was approved.

Rates — Rule — Charitable institutions — Joint user.

A rule of a telephone company that in order to obtain the rate allowed charitable and public institutions, the applicant must occupy the entire premises and use the service exclusively for the purpose intended, and furnish a written guaranty to that effect when required, it being understood that no joint-user rate will be allowed on this class of service, was approved.

Rates — Rule — Extension sets.

A rule of a telephone company that extension sets and bells located outside the premises will be furnished for regular service at schedule rates with a mileage charge of \$3 per annum for each $\frac{1}{4}$ mile or fraction thereof without listing, and that extension sets and bells located out of doors or in open sheds will be charged for at double the regular price, was approved.

Rates — Rule — Installation charges.

A rule of a telephone company that the company will pay the initial expense of installation, and that the subscriber must pay the expense of any subsequent change in the location of the telephone instrument, was approved.

Equipment — Rule — Breakage of material.

A rule of a telephone company that the subscriber must pay for all careless breakage of material at his station was approved.

Service — Rule — Listing — Directory.

A rule of a telephone company that each main, party, and rural telephone shall be entitled to one listing in the directory, was approved.

Notice — Rule — Removal of telephone.

A rule of a telephone company that notice of removal of the telephone instrument shall be in writing was approved.

Rates — Rule — Deposit — Guaranty.

A rule of a telephone company that a deposit or properly signed guaranty will be required from parties who are not known to the company to be responsible for the payment of service charges was approved.

Rates — Rule — Prompt payment — Penalty.

A rule of a telephone company that a penalty of 10 cents shall be charged if bills for local service are not paid by the 20th of the following month was approved.

Rates — Rule — Discount for prompt payment — Rural service.

A rule of a telephone company providing for a discount of 75 cents per year where payments for rural service are made one year in advance, and of 25 cents per half year where payments are made a half year in advance, the annual rate for such service being \$15, was approved.

[February 4, 1915.]

APPLICATION for authority to increase rates and for approval of rules affecting rates; granted.

Appearances: H. H. Christofferson and C. H. Brown for petitioner.

By the **Commission**: Application in this matter was filed with the Commission July 30, 1914. The application shows that Clark County Telephone Company is a public utility engaged in the management and operation of a telephone exchange and toll system in Clark and Marathon counties, and that the lawful rates of the applicant in effect at the time of the filing of the petition were as follows:

Business telephones, 1 party	\$18.00	per year
Residence " 1 "	12.00	" "
Rural telephones	12.00	" "

The rules of the company, so far as they affected the rates charged, were as follows:

"1. Phones are installed by the company with the understanding that service will be retained for a period of one year.

"2. Local rural-line service is free to subscribers only. If a nonsubscriber uses this service, a fee of 10 cents must be collected. Nonsubscribers should pay a fee of 10 cents for local service. There will be a charge of \$1 for an outside move and 50 cents for an inside move. All accounts must be settled at the office once every month.

"3. Subscribers are responsible for all toll originating at their stations.

"4. Subscribers may have the use of toll lines three minutes only."

Application is made to the Commission for authority to increase rates, for the reason that the present rates are considered insufficient to meet the required demands for adequate service and to provide a satisfactory return upon the investment. The company, therefore, asks for authority to put into effect the following schedule of rates and rules affecting the rates to be charged:

"The exchange limits shall be the village or city limits where exchanges are operated, *viz.*, villages of Loyal, Spencer, and Unity, and the city of Colby.

Business Telephones.

Magneto, one party, unlimited service	\$24.00	per annum
Extension sets in same building, and for business service only, without listing	9.00	" "
Extension bells, in same building, ordinary	1.80	" "
Joint user with consent of subscriber and company	12.00	" "
Extra listing in directory, same firm and business	1.20	" "

Residence Telephones.

Magneto, one party, unlimited service\$15.00 per annum
 Extension sets, in same building, and for residence service
 only, without listing 6.00 " "
 Extension bells, same as quoted above.

Rural Telephones.

The rate for rural service shall be \$15 per annum.

Service over trunk lines between central offices is free to subscribers only.

If nonsubscribers use this service the regular toll fee must be collected.

If nonsubscribers use the rural-line service a fee of 10 cents must be collected.

A charge of \$18 per annum will be made on all rural telephones that are 10 miles or more distant from the central office where switched.

Penalties.

The rates for local and rural service shall apply when payments are made on or before the 20th of the month following the month for which service is rendered. There shall be a penalty of 25 cents per month for delinquent payments for said service.

Extra Equipment.

Extra long cord for desk sets10 cents per foot.
 Auxiliary Receivers10 cents per month.

Institutions not Operated for Profit.

Charitable institutions, public and parochial school, armory, public library, churches, and fraternal societies will be classed as and carry rates and privileges of individual line residences except as to joint user privileges.

Contract Periods.

Rates are quoted for service extending over a period of one year.

Short-term contracts will be entered into on the following basis:

Service for three months or less— 50 per cent of the annual rate.

“ “ six “ “ “ — 75 “ “ “ “ “ “

“ “ nine “ “ “ — 90 “ “ “ “ “ “

For service over nine months —100 “ “ “ “ “ “

The above rates are offered with the understanding that the company has facilities to provide the service at the location desired.

Rules Affecting Rates.

Subscribers who may wish to suspend service for a portion of the year during absence from the community may do so upon payment of one half the regular net rate for the period of suspension, but in no case shall an allowance be made for a period of less than one month.

In all cases the instrument shall remain in place without service or hold its original listing in the directory.

Joint user shall include any and all service not specified by the main line listing. One main and one joint user may be served on one main line unless the main-line subscriber should desire the joint-user rate to cover his own additional business.

In order to obtain the rate allowed charitable and public institutions, the

applicant must occupy the entire premises and use the service exclusively for the purpose intended. The institution may be required to furnish a written guaranty to cover the above. No joint-user rate will be allowed on this class of service.

Extension sets and bells located outside premises will be furnished for regular service at the above rates with a mileage charge of \$3 per annum for each $\frac{1}{2}$ mile or fraction thereof, without listing. Extension sets and bells located out of doors or in the open sheds will be charged for at double the regular price.

The company pays the initial expense of installation. The subscriber must pay the expense of any subsequent change in the location of the telephone instrument.

Rules.

Subscriber must pay for all careless breakage of material at his station.

Each main, party, and rural telephone shall be entitled to one listing in the directory.

Notice of removal of the telephone instrument shall be in writing.

A deposit or properly signed guaranty will be required from parties who are not known to the company to be responsible for the payment of service charges.

In this statement of proposed rates, the statement that "the exchange limits shall be the village or city limits where exchanges are operated" is taken to mean not that the company contemplates charging the toll between the various cities and villages, but merely that it intends that the city or village limits shall mark the division between local and rural service.

Hearing in this case was held at Madison, January 8, 1915. Appearances for the company were H. H. Christofferson and C. H. Brown, and no appearances were entered in opposition. Following the date of the hearing, the company submitted an amendment to its proposed rate schedule by which it proposes to offer local residence rates as follows:

Single party	\$1.25 per month
Two party	1.15 " "

—and to provide for discounts on its rural rates as follows:

\$7.25 for six months if bills are paid six months in advance.

\$14.25 for a year if bills are paid one year in advance.

In connection with the local rates, the company asks for authority to charge a penalty of 10 cents if bills are not paid by the 20th of the following month.

At the time of the hearing, the representatives of the company presented an argument setting forth the financial condition of

the utility, and giving in some detail the reasons for asking for increased earnings. Although it is not considered necessary to review in detail the argument of the company, consideration must be given to the financial condition in determining what are reasonable rates. As evidence of the financial situation, we have before us two statements, — one prepared by a representative of the Commission's statistical department, and covering a period of nine months ended May 31, 1914. According to this statement the operating earnings for the nine months in question were \$7,065.23, and expenses, exclusive of taxes, interest, and depreciation, were \$4,751.66. The report of the utility for the year ended December 31, 1914, shows a total operating revenue of \$10,171.62, and operating expenses, exclusive of taxes, interest, and depreciation, amounting to \$6,639.46. Assuming that rates would be finally adjusted as asked for in the original application of the company without giving consideration to the reductions agreed to by the company after the time of the hearing, and basing our estimates upon the number of subscribers of each class connected as of December 31, 1914, we find that the probable annual increase of revenues would be as follows:—

100 business phones at \$6.00 increase	\$ 600.00
216 local residence phones at \$3.00 increase	648.00
321 rural phones at \$3.00 increase	963.00
Total increase	\$2,211.00

This, added to the revenues reported by the company for the last year, would show a total probable revenue of \$12,382.62. In the statements which follow, the probable increase of revenue has been based upon the number of telephones installed at the close of the year, while the expenses used have been based upon actual conditions for the year, except as otherwise noted, with the result that the excess of revenues over expenses appears to be somewhat greater than should actually be expected in practical operation. However, using these figures in the light of this condition, we find the excess of total probable revenues above expenses, including in expenses the amount of taxes, but not including interest and depreciation, to be \$5,548.37. The valuation made by the Commission as of October 1, 1914, showed the cost new of the physical property to be \$32,450, with a

present value of \$27,868. Without attempting to fix definitely upon the fair value of this property, it appears reasonable in this case, in view of the apparently excellent condition in which the system is at present, to provide for interest and depreciation an amount equal to about 14 per cent of the cost new of the property, or \$4,543. It would appear from this that the probable revenues to be obtained are slightly more than \$1,000 above the revenue requirements. However, the modification of rates suggested by the company by which a discount will be offered for prompt payment of rural rates, and by which a two-party residence rate will be offered for local subscribers, will probably reduce the revenues by \$300 or \$400 from the amount assumed. Probably it will be fair to assume a reduction of \$350, so that the amount available for interest and depreciation, instead of being \$5,548.37, will be about \$5,198.37. In his statement, no allowance has been given to the increased salary requirements of the company. At the time of the hearing, the representatives of the applicant submitted a statement to show that the salary requirements would be approximately \$120 per month greater than the general level of salaries had been during the past year. It was also shown that increases amounting to \$30 a month had already been made, which were not included in the statement of operating expenses. Whether or not the salary increases will actually amount to as much as \$120 per month without a corresponding increase in sources of revenue, we are not in a position to state, but there seems to be no reason to doubt the necessity for some increases in salaries. If these should be as much as \$500 per year, the total amount available for interest and depreciation would be decreased to \$4,698.37, or only \$155.37 more than the amount required to allow 14 per cent upon a tentative value equal to the cost new of the property. It should be borne in mind, as previously mentioned, that the operating expenses, with the exception of such allowances as have been made for increase in salaries, have been the expenses of operating the number of phones actually connected during the past year, and cannot be accepted as the expense of operating the number of telephones in use at the close of the year upon which the estimates of increased revenues were based.

Consequently, as far as the financial requirements of the company are concerned, the increase asked for appears to be reasonable. The Commission has on file a protest signed by a larger number of subscribers, some of whom state that the service rendered has not been satisfactory, and all of whom agree in objecting to an increase in the rates for telephone service. However, it is claimed by the company, and apparently with some justification, that these remonstrances have resulted from a circular letter sent out by an individual interested in the situation, in which he stated that he understood that the company had filed an application for authority to increase its rates from \$1 to \$1.50 per month, this relating apparently to rates for rural service. As the actual increase for patrons who pay their bills one year in advance will be \$2.25 per year, and for patrons who pay their bills six months in advance \$2.50 per year for rural telephones, it appears that objections based upon the assumption that an increase of \$6 per year was asked for would hardly apply with much force to an increase of from \$2.25 to \$2.50 per year. Furthermore, it is a matter of record that a number of these rural lines are long lines, and that the company proposes to furnish service at the rates above mentioned to all subscribers situated within 10 miles of the central office to which they are connected. Beyond the 10-mile limit the proposed rate is \$1.50 per phone.

It appears from the record that at the present time all rural lines are full metallic and most of them are of standard construction, being built on cedar poles, averaging about 35 to the mile. The statement of the company, which is undisputed, is that the number of phones on such lines ranges from 8 to 13. Continuous night and day service is furnished, and subscribers have the free use of all lines and all exchanges. We know of no company furnishing telephone service of a standard grade over metallic lines with a limited number of subscribers per line, and with lines as long as those of the applicant, which has been able to furnish rural service at a lower rate than the one suggested by the applicant. The charge that service has been poor appears to be very largely unfounded. At the time of the hearing, the trouble records of lines serving subscribers who had entered the most vigorous ob-

jections on the score of service were read into the record in this case. Line 119 at the Loyal exchange, according to the testimony presented, is the line serving the individual who circulated the letter previously referred to. During the month of October, there were eighteen phones connected to this line. It was then being reconstructed and changed from a grounded to a metallic line. The records of the company show the following with regard to trouble on that line:

Miller Bros. unable to get central; trouble reported at 7:40 A. M., cleared at 9 A. M.

Mary Schultz unable to get central; reported at 6:10 A. M., cleared at 3:30 P. M.

Ben Dritchie, poor ringing; cleared in four hours.

Miller Bros., bells do not ring. Time of clearing not stated.

The testimony is to the effect that this includes all the trouble reported from this line during the month of October. During the month of November, trouble was reported from only one subscriber whose bells were out of order on three occasions. Bells were removed and new bells installed. For the month of December, no trouble whatever was reported on this line. Since October, the line has been made full metallic, and the number of phones reduced. The testimony indicates that this line occasioned more trouble than most of the rural lines, because of its being a long line with a large number of telephones attached up until late in the fall of 1914. As far as the charge that the service has been poor is concerned, there is nothing in the record to substantiate it aside from the admission that the reconstruction work done during the past year may have interfered with service to some extent. Neither does it appear reasonable that service would not have been improved by the improved facilities installed by the company.

Clark County Telephone Company was formed by the consolidation of a number of companies and exchanges operating within the territory now served by it. The level of rates which has been charged by this company is substantially the same as that which was charged by its predecessors for a service covering only part of the territory. This company furnishes unlimited service to four cities and villages, about 320 rural telephones on its own

lines, and about 235 rural telephones on connecting lines, making an exchange of approximately 850 telephones. The rules and regulations proposed by the company as bearing upon the rates to be charged appear to be reasonable. In some respects, they are different than the rules and regulations previously applied, but are not out of line with what is generally considered good telephone practice, and we believe they should be approved in this case.

It is therefore ordered that the applicant, Clark County Telephone Company, is hereby authorized to discontinue its present schedule of rates and its present rules affecting rates, and to substitute therefor the schedule of rates and the rules respecting rates applied for in this case and quoted in this decision, with the modifications informally applied for by the applicant, which provide that there shall be a two-party residence rate for local service of \$1.15 per month, and a discount for rural service of 75 cents per year where payments are made one year in advance, and of 25 cents per half year where payments are made a half year in advance. These rates and rules may be made effective March 1, 1915.

Dated at Madison, Wisconsin, this 4th day of February, 1915.

Railroad Commission of Wisconsin, by Halford Erickson, David Harlowe, Carl D. Jackson, Commissioners.

Note.—Advance deposits or security for credit as conditions to rendering of service.

With respect to some services, the rule requiring prepayment for service is not workable, because of the impossibility of estimating the amount of the service in advance. Measured services, such as the meter service of gas, electric, and water companies, and the toll service of the telephone companies, are the most common instances of this situation. In such cases the courts and commissions, with a few exceptions, have approved the requirements of advance deposits or security to cover expected service.

In *Re Mountain States Tel. & Tel. Co.* (1913; Ariz.) 24 A. T. & T. Co. Com. L. 361, in which the Commission approved a rate schedule requiring advance deposits for telephone tolls, it was said that a second item to be considered is the fact that sundry services rendered by telephone companies cannot possibly be collected in advance; for illustration, toll service and telegrams telephoned direct from the subscriber's station.

In *Cedar Rapids Gaslight Co. v. Cedar Rapids* (1909) 144 Iowa, 426, 48 L.R.A.(N.S.) 1025, 138 Am. St. Rep. 299, 120 N. W. 966, 971, the court said that the company may not base a rule on the theory that the people as a whole are dishonest, but it has the right to adopt a rule which, while giving the honest citizen what he pays for, will prevent the dishonest from getting that which he will never pay for; and that the company may establish a rule exacting payment in advance in reasonable amounts, or deposit of security, at least is fully settled by the authorities.

In *Renicke v. Public Service Gas Co.* (1914; N. J.) 6 Rate Research, 266, 31 A. T. & T. Co. Com. L. 228, 229, the Commission makes clear that such deposits are something more than mere security saying: "This complaint challenges the reasonableness of the practice of the respondent company in discontinuing service to a customer who has failed to pay a bill for gas within the time limited by the company's rule, when said customer has a deposit with the company, amounting to more than the unpaid bill. The fund is held to answer the default of the consumer, and whenever the consumer defaults in payment the fund may be resorted to. Its exaction cannot be justified on any other ground. Persons with credit and financial standing are not required to make a deposit. If the fund could be regarded otherwise than as answerable for the default of the consumer, it would be necessary for the company to reduce its claim to judgment and levy on the fund. Clearly the fund occupies no such position. It is a sum of money in the company's hands, which is answerable for the payment of the consumer's account, whenever there is default in the payment thereof in the ordinary course."

In *Cole v. Ft. Scott & N. L. H. W. & P. Co.* (1913; Mo.) 6 Rate Research, 230, 26 A. T. & T. Co. Com. L. 1191, the requirement of security is prescribed as an alternative to a money deposit. In this case it was said that the defendant company supplying water, gas, or electric energy may require a minimum cash deposit or advance payment or a personal guaranty of a responsible person from each customer, in the city of Nevada, before service is supplied, providing the customer shall be given the option to either make the deposit, or give the personal guaranty in lieu of such deposit; and provided, further, that the amount so required or guaranteed shall not exceed the estimated monthly bill from such consumer.

So, in *Berend v. Wisconsin Tel. Co.* (1909) 4 Wis. R. C. R. 150, 159, the Commission, after quoting many authorities, laid down the following rules:

1. It may require of any patron the deposit of a reasonable sum of money as security for the prompt payment of bills when due. In determining the reasonableness of the amount thus to be deposited, the probable amount of the indebtedness that may be incurred during the month or other stated period at the end of which bills are made out and rendered, is an important factor. No more than a sum

sufficient to furnish adequate security for the credit extended may be legally exacted.

2. It may require satisfactory security to be furnished in lieu of such deposit.

Wyman on Public Service Corporations, § 434, after stating that there are but few court decisions as to the reasonableness of cash deposit to be required, concludes: "It seems clear that the amount of deposit which may be required is what would ordinarily be sufficient to cover the expected use in the usual period for which bills are rendered."

The same holding is found in *Berend v. Wisconsin Tel. Co.* and in *Cole v. Ft. Scott & N. L. H. W. & P. Co.* above quoted from.

But in *Havre De Grace v. Havre De Grace Electric Co.* (1913; Md.) 6 Rate Research, 230, it was said that a deposit double the amount of the proper monthly bill will be required as a guaranty that all future monthly bills will be paid.

Interest was required to be allowed on advance deposits in the following cases: *Corporation Commission v. Granite Springs Water Co.* (1914; Ariz.) 32 A. T. & T. Co. Com. L. 558; *Re Pocatello Gas & Power Co.* (1914; Idaho) 27 A. T. & T. Co. Com. L. 292; *Cole v. Ft. Scott & N. L. H. W. & P. Co.* above quoted from; *Re Rates Montana Power Co.* (1913; Mont.) 28 A. T. & T. Co. Com. L. 513; *Murphy v. Coast Gas Co.* (1912; N. J.) 11 A. T. & T. Co. Com. L. 117; *New York Transportation Corporations Law*, § 63; *Buffalo Gas Co. v. Buffalo* (1913; N. Y. 2d Dist.) 23 A. T. & T. Co. Com. L. 244; *Bellis v. Cushing Gas Co.* (1913; Okla.) 24 A. T. & T. Co. Com. L. 672.

Other Commission cases which have approved advance deposit or security requirements are:

Huffman v. Tucson Gas E. L. & P. Co. (1913; Ariz.) 6 Rate Research, 227, 21 A. T. & T. Co. Com. L. 725; *Re Farmers Union Tel. Co.* (1913; Ariz.) 26 A. T. & T. Co. Com. L. 1115; *Re Rates Wells Fargo Co. & American Exp. Co.* (1913; Cal.) 23 A. T. & T. Co. Com. L. 125; *Re Easton Gas Works & Eastern Penn. Pr. Co.* (1914; N. J.) 6 Rate Research, 266, 29 A. T. & T. Co. Com. L. 1105; *Drake v. Pacific Tel. & Tel. Co.* (1912) 5 Nev. R. C. R. 62, 3 A. T. & T. Co. C. T. C. 1143; *Bellis v. Cushing Gas Co.* (1913; Nev.) 6 Rate Research, 269, 24 A. T. & T. Co. Com. L. 672; *McAlester Pub. Co. v. Choctaw R. & Light Co.* Okla. Corp. Com. Order No. 545, 6 Rate Research, 269; *Wright Dickinson Hotel Co. v. Pacific Tel. & Tel. Co. & Home Tel. & Tel. Co.* (1913; Ore.) 25 A. T. & T. Co. Com. L. 870; *Re Badger State Tel. & Tel. Co.* (1914) — Wis. R. C. R. —, 31 A. T. & T. Co. Com. L. 139; *Re Madison Gas & Electric Co.* (1914) — Wis. R. C. R. —, 27 A. T. & T. Co. Com. L. 364; *Re Farmers Union Tel. Co.* (1913) — Wis. R. C. R. —, 26 A. T. & T. Co. Com. L. 1115.

Other court cases approving deposit or security requirements are: *Phelan v. Boone Gas Co.* (1910) 147 Iowa, 626, 31 L.R.A.(N.S.) 319, 125 N. W. 209; *Owensboro Gaslight Co. v. Hildebrand* (1897) 19 Ky. L. Rep. 983, 42 S. W. 351; *Turner v. Revere Water Co.* (1898) 171 Mass. 336, 40 L.R.A. 657, 68 Am. St. Rep. 432, 50 N. E. 634; *Williams v. Mutual Gas Co.* (1899) 52 Mich. 499, 50 Am. Rep. 266, 18 N. W. 236; *Vanderberg v. Kansas City Missouri Gas Co.* (1907) 126 Mo. App. 600, 608, 105 S. W. 17; *Bienenfeld v. Consolidated Gas Co.* (1907) 119 App. Div. 855, 103 N. Y. Supp. 1116; *Pollitz v. Consolidated Gas Co.* (1907) 118 App. Div. 92, 102 N. Y. Supp. 1017; *Bennett v. Eastchester Gaslight Co.* (1899) 40 App. Div. 169, 57 N. Y. Supp. 847; *Shepard v. Milwaukee Gaslight Co.* (1858) 6 Wis. 539, 70 Am. Dec. 479.

The following decisions have denied utilities the right to require advance deposits of their patrons:

In *Re Goodrich*, doing business under name Antelope Tel. Co. (1912; Cal.) 6 Rate Research, 229, 31 A. T. & T. Co. Com. L. 12, it was said: "The applicant asks the Commission also for permission to charge his patrons an amount of \$5 returnable after one year, with interest at 6 per cent, as a guaranty that subscribers will retain service for that period. So many complaints have reached the Commission from the patrons of various utilities of this state with reference to deposit, that the Commission will in the near future institute proceedings calling into question the reasonableness of this practice; and while not denying the right of public utilities for reasonable protection against possible losses, I deem it advisable to withhold this permission for the present."

See also to the same effect *Re Pacific Tel. & Tel. Co.* (1913) 2 Cal. R. C. R. 163; *Re Pacific Tel. & Tel. Co.* (1912) 1 Cal. R. C. R. 307; *San Jose v. Pacific Tel. & Tel. Co.* (1913) 3 Cal. R. C. R. 720; *Railroad Com. v. Pacific Tel. & Tel. Co.* (1914; Nev.) 6 Rate Research, 265, 29 A. T. & T. Co. Com. L. 896; *Re Adoption Regulation for Telephone Co.* (1914) Washington P. S. Com. Order No. 1791, 36 A. T. & T. Co. Com. L. 305.

WISCONSIN RAILROAD COMMISSION.

CITY OF NEENAH

v.

WISCONSIN TRACTION, LIGHT, HEAT, & POWER COMPANY.

Franchises — Right to do business — Property.

The franchise or right of a public utility to do business is a property right in Wisconsin, contingent upon and inseparable from the ownership of the physical property of the company.

Municipalities — Purchase of electric current for resale.

A city cannot acquire the business of an electric light and power company by having all of the current supplied to customers of the company therein delivered to it at wholesale in order to pass on such advantage to the individual customers by giving them the benefit of the wholesale price, without acquiring and paying for all of the property of the company used and useful for carrying on such business, including the going-concern value and physical property.

Municipalities — Remedies against utilities.

The public utility law of Wisconsin provides three remedies for municipalities dealing with public-utility corporations; viz. (1) election to purchase; (2) application for a certificate of necessity and convenience to permit competition; and (3) application for an order prescribing reasonable rates.

The Commission also laid down the following propositions, *arguendo*:

Municipality — Purchase of franchise — Damages.

Even if a city could condemn the franchise of a utility apart from the other property, it must pay to the company the difference in value of the property including the franchise, before and after taking the franchise, and including the so-called going value.

Municipality — Purchase of franchise — Damages — Going value.

The acquisition by a city of the franchise of an electric light and power company to sell current directly to consumers of the city, separate and apart from its physical property, under an agreement to buy such current from the company at wholesale rates for a ten-year period only, would affect the company's so-called going value, inasmuch as the company, having relinquished its franchise, would have no right to do business in the city at the end of such period.

Municipality — Purchase of franchise — Advantage of regulation.

A city would secure no advantage that could not be secured by an investigation into the reasonableness of rates, by acquiring separate and apart from the physical property the franchise of an electric light and power company to sell current to consumers of the city under an agreement to buy such current from the company, since in order to net the company a reasonable return on its business it would have to pay interest, taxes, and depreciation on all its property used for that city plus the actual cost of delivering current.

Rates — Different kinds of business — Reasonableness — Test.

Merely because an electric light and power company has two rates on file one of which gives a lower per unit charge for certain classes of business than does the other, the assumption is not warranted that either rate is reasonable for all classes of business, since the reasonableness of any rate for any class of service must be tested according to the principles laid down by the commission, the most vital of which are that the utility shall receive an adequate return upon its property, and the consumer shall receive service at a reasonable price.

Rates — Electric utility — Diversity factor.

The most important feature of electric utility rate making is the diversity factor.

Rates — Consumer's demand — Substation demand.

A rate which makes a charge for the demand at the consumer's premises is not designed for the accumulation of demands at a single substation.

Rates — Reasonableness — Form of schedule — Effect of.

The out-put feature of a rate schedule designed so as to permit of cumulative billing is an unfair basis for determining the wholesale rate at a substation, where the total or whole of the consumer's demands is larger than the demand at the substation.

Public utilities — Regulation — State policy.

The Wisconsin state policy with reference to public utilities has shifted so as to place more emphasis on the adjustment of rates than on the introduction of competition.

[January 28, 1915.]

COMPLAINT asking that city be allowed to acquire franchise of electric light and power company; dismissed.

By the **Commission**: Complaint in this matter was filed with this Commission by the city of Neenah, through its common council, on February 4, 1914. Hearing was held at the office of the Commission in the capitol, Madison, Wisconsin, on September 4, 1914.

While the city alleges the unreasonableness of the respondent's rates, its immediate remedy is not sought in an action before this Commission for a reduction in the same. It appears that, preliminary to further proceedings in this matter, the city desires a ruling on several questions directly affecting the public utility business in that locality. In order that a clearer understanding may be had as to the exact character of the complaint, it has seemed advisable to describe the conditions surrounding the operation of the electric system at Neenah.

The current which is distributed at this place is generated by the hydraulic and steam plants of the respondent, located at Appleton. It is transmitted to Neenah over a 2,200 volt line, and carried through the local substation, where potential regulation for the commercial circuits and constant current transformation for the arc-lighting system are provided for.

The respondent company has a form of rate schedule on file which is commonly referred to by rate technicians as a Hopkinson demand rate. In addition to this rate, it has an increment or so-called limiting schedule which limits the price per unit of

product. The latter rate is designed to insure nonprohibitory per unit charges to short-hour users of electrical energy. The city wishes to purchase from the respondent all of the current now used for any purpose within the city of Neenah, and to resell the same to the individual consumers of the respondent. In other words, the municipality proposes to act as a middleman between the individual consumers and the company. In this role, it expects to secure a low rate per kilowatt hour by thus purchasing on an accumulative basis. This advantage it proposes to pass on to the individual electric consumers. The respondent, on the other hand, must relinquish its claim to its present consumers and refrain hereafter from selling at retail within the city. It appears that the Hopkinson demand schedule, referred to above, insures a lower unit rate than the increment schedule, for energy taken in the quantities and under the conditions which would obtain if this arrangement could be effected. The city has asked this Commission to ratify this particular schedule as reasonable and equitable under the circumstances.

Incident to the application of such a form of rate schedule is the determination of the maximum demand. The city requests that this Commission define the method by which this demand is to be ascertained.

Inasmuch as the Hopkinson rate applies to current delivered to the customer's premises after transformation has taken place, the question immediately arises as to whether or not all of the costs have been included up to that point, and, if so, whether it will be necessary for the municipality to purchase the distribution system. The third ruling asked of the Commission relates to this point.

It will appear, from the explanations made above, that the only question of importance to be decided is that relating to the ownership of the distribution system. In other words, the question put squarely before the Commission in these proceedings is whether the right to do a public utility business in this state is a property right, and, if so, whether such right is contingent upon the ownership of the physical property. If the municipality is permitted to effect the arrangement which it desires, its action amounts to a virtual taking away of the respondent's franchise,

or right to do business, and the assertion of ownership over **that** business.

We cannot escape the conclusion that if the city acquires the right to sell directly to the consuming public at Neenah it has taken something of value from the respondent. Upon what basis such value is to be determined we do not deem it necessary to decide in these proceedings. This question becomes irrelevant when we have once settled as a fact that the right to do a public utility business in this state is contingent upon the ownership of the physical property.

That this right of franchise is property is settled. See Joyce, *Franchises*, pp. 83 to 85. Also, *Louisville & J. Ferry Co. v. Kentucky*, 188 U. S. 385, 394, 47 L. ed. 513, 517, 23 Sup. Ct. Rep. 463; *Central P. R. Co. v. California*, 162 U. S. 91, 127, 40 L. ed. 903, 915, 16 Sup. Ct. Rep. 766; *Metropolitan City R. Co. v. Chicago West. Div. R. Co.* 87 Ill. 317, 324; *People ex rel. Woodhaven Gaslight Co. v. Deehan*, 153 N. Y. 528, 47 N. E. 787; *Cauble v. Craig*, 94 Mo. App. 675, 69 S. W. 49. As to whether it is personal or real property, we need not concern ourselves. Nor need we enter upon a review of the findings of the courts in other states as to whether franchise value attaches itself to the physical property. (For such cases see Joyce on *Franchises*.) We have to deal here only with franchise rights in this state.

Before the present era of regulation of public-service company rates, the matter of the valuation of franchises was brought before the court in taxation and condemnation proceedings. In a number of states by statutory provision taxes were assessed on franchises as separable items of property, and such separation was held to be justifiable by the courts. Recognition of this distinct form of value was given, due, no doubt, to the large excess of the total value of the corporate property over the value of the physical elements as such.

In Wisconsin, this distinction was never entered into by the legislature, and the supreme court, while recognizing the right of the legislature to so distinguish, has always held that the physical and intangible items of property should be considered as an entirety. This matter has been brought before the court

in taxation cases, and has been uniformly decided in the manner indicated above. See *State ex rel. Ashland Water Co. v. Whar- ton*, 115 Wis. 457, 91 N. W. 976; *Chicago & N. W. R. Co. v. State*, 128 Wis. 553, 108 N. W. 557; *Fond du Lac Water Co. v. Fond du Lac*, 82 Wis. 322, 16 L.R.A. 581, 52 N. W. 439; *Monroe Waterworks Co. v. Monroe*, 110 Wis. 11, 85 N. W. 685; *Yellow River Improv. Co. v. Wood County*, 81 Wis. 554, 17 L.R.A. 92, 51 N. W. 1004. In the latter case, the question before the court was whether the value of the dam, with attendant privileges, was to be assessed in connection with the particular parcel of land upon which it rested, or in connection with the entire corporate property, and the court held that the latter was the correct method of assessing such privileges. In *Chicago & N. W. R. Co. v. State*, 128 Wis. 553, 108 N. W. 557, the court decided that the value of railway property for taxation purposes was not to be considered as an addition of physical to intangible value, but the value of the property as a unit. In *Washburn v. Washburn Waterworks Co.* 120 Wis. 575, 585, 98 N. W. 539, the court, after referring to a number of cases in which this question had been considered, said: "An examination of these and other cases decided here, that might be referred to, shows that it has been as firmly established as anything can be by judicial determinations, that all the property of a public-service corporation, such as appellant, street, and other railway companies, and public lighting companies, whether real, personal, or mixed, in the ordinary sense of those terms, including franchises other than the mere right to be a corporation, is one entire indivisible thing; that all the parts partake of the nature of the franchise from which springs the public duty, and as that is deemed to be personalty, all should be regarded as such. In that view it would be the height of absurdity to consider value, and impose a tax upon one part of such entire thing separate from the rest. There can be no separation without destruction. Therefore, the separate value of the parts in the aggregate would not necessarily approximate to or be any legitimate measure of the value of all the parts, viewed as one complete machine, so to speak. The franchise by itself would be valueless. The plant in its parts as realty and personalty, according to the character thereof, irrespective of the combination of all into one entire

thing, might be of little value, and probably would be, as compared to what they would represent in the new form produced by the union of many parts into one."

This court has as uniformly held that the legislature might direct that a separation be made between tangible and intangible items of property. See *Chicago, M. & St. P. R. Co. v. Janesville*, 137 Wis. 7, 10, 28 L.R.A.(N.S.) 1124, 118 N. W. 182; *Yellow River Improv. Co. v. Wood County*, 81 Wis. 554, 560, 562, 17 L.R.A. 92, 51 N. W. 1004.

The legislature, however, has expressed itself as favoring the treating of the property as an entirety. Section 1037a of the Statutes enacted in 1898 gave expression to the legislative intent. When the tax statutes were revised in 1913 this policy was made applicable to all water, light, heat, and power companies. (See Statutes 1913, § 51, 43, at p. 845.) In both of these sections, the assessors are directed to treat all property, rights, and franchises, "together with all real estate used in such business and necessary to the prosecution thereof," as personal property, and to value and assess such property as a single item.

When the public utility statutes were enacted in 1907, this Commission was directed to ascertain, in both municipal purchase and rate cases, the actual value of all the property "used and useful for the convenience of the public."

The supreme court of the state has interpreted the intent of the legislature as expressed in the public utility statutes as against the separation of tangible and intangible elements in municipal purchase and other cases. In connection with the indeterminate feature of the law and the assignability of the same, that court said in *Calumet Service Co. v. Chilton*, 148 Wis. 334, at page 352, 135 N. W. 131: "The Wisconsin Electric Service Company as found, on the 21st day of December, 1907, became the owner of a 'license, permit, or franchise,' call it what we may, from the state, characterized in the public utility law as an indeterminate permit, of the scope, as regards the privilege feature, of the Bink franchise, as herein determined. The physical things in use and for use in connection therewith, and the existing business to which the privilege was referable, all became, by operation of law, merged in the single thing, the public utility property. The franchise, in such cir-

cumstances, is the principal thing, and, in general, is inseparable from the rest. The latter really partakes of the nature of the former."

In the Appleton Waterworks Case, which involved the matter of municipal acquisition, the same court, in connection with the allowance made by this Commission for the going value of the plant, said: "The value of the plant and business is an indivisible gross amount. It is not obtained by adding up a number of separate items, but by taking a comprehensive view of each and all of the elements of property, tangible and intangible, including property rights, and considering them all not as separate things, but as inseparable parts of one harmonious entity, and exercising the judgment as to the value of that entity." *Appleton Waterworks Co. v. Railroad Commission*, 154 Wis. 121, 148, 47 L.R.A.(N.S.) 770, 142 N. W. 476.

Under the public utility law a municipality can only terminate a franchise or indeterminate permit when it determines to acquire the plant of the public utility, and then it must pay just compensation for the property as a going concern.

Even if the city could lawfully condemn the franchise of the company, it would not be benefited thereby to any material extent. As the franchise is essential to the operation of the property, any damage for taking such franchise, separate and apart from the property, would, under any valid law, result in requiring the municipality to pay the difference in the value of the property, including the franchise before and after the taking of the franchise.

The fundamental proposition is that something of value is being taken from the respondents. It has built up, at some expense, no doubt, a somewhat profitable business in the locality under review. If the city acquires the business thus built up, what is to become of the so-called going value to which the respondent is entitled by the ruling of practically every court which has passed upon the question?

The city may argue that this will still attach itself to the physical property of the company, and inasmuch as the city proposes to buy current at wholesale rates from the same utility, its value will not be in any way affected. We do not see how such can be the case. The city in its proposed action will re-

ceive the business of the company in the way of an established retail market for the sale of current. It obliges itself to buy current from the respondent, in case a satisfactory contract can be entered into, only for a term of ten years, according to its plans as represented in a letter under date of November 4, 1914. What becomes of this element of value at the end of the ten-year period should the city decide not to purchase from the respondent any longer? The respondent would have no right of action. It has relinquished all its rights to do business in the city of Neenah as soon as it has relinquished its franchise. Even its distribution system might be of little value; for, apart from its franchise privileges, it has no right to the use of the streets of the city, and could be ordered to remove its poles at great loss in value at the end of the ten-year period.

But even granting that such an arrangement could be effected, the city, in order to net the respondent a reasonable return on its Neenah business, would have to pay interest, taxes, and depreciation on all the property devoted to the public use in that city, plus the actual cost of delivering current to that place. No advantage would accrue to the city which could not be accrued by filing with this Commission a request for an investigation into the reasonableness of the rates of the respondent.

The city in these proceedings has started with the wrong assumption. Merely because there are two rates on file, one of which gives a lower per unit charge for certain classes of business than does the other, the assumption is not warranted that either rate is reasonable for all classes of business. The reasonableness of any rate for any class of service must be tested according to the principles which have been explained many times by this Commission.

The most vital of these principles is that the utility furnishing the service shall receive an adequate return upon its property, and that the consumer shall receive his service at a reasonable price.

We do not deem it a part of these proceedings to test the reasonableness of the respondent's rates at Neenah. We can only point out that the city when computing the net revenue under the Hopkinson schedule neglected the most important feature of public-utility rate making,—the diversity factor. The rate re-

ferred to makes a charge for the demand at the consumer's premises, and is not designed for the accumulation of demands at the Neenah substation. Nor is the output feature of this schedule designed so as to permit of cumulative billing. The fact that the total of all of the consumer's demands is larger than the demand at the substation will mean a considerable shrinkage in the respondent's revenues. Inasmuch as the question of rates is not up for consideration, we do not feel justified in arbitrarily enforcing such a decrease in the earnings of the company. Furthermore, it has always been the policy of this Commission to thoroughly investigate such matters before reaching any conclusions as to rate adjustments.

The consulting engineer, who testified for the city at the time of the hearing, seemed inclined to believe that because the rate schedule of the respondent had a demand and output feature, that the full cost of service was included, and that the rate was *ipso facto* reasonable. That the terms given to the component parts of rate schedules have nothing in common with the question of their reasonableness is a matter which needs no proof. The proper basis for the determination of reasonable rates takes no cognizance of words or phrases, but indicates specifically the cost of service to each class. Looking at the matter in this light, the form of schedule is merely incidental. This view of the matter does not invalidate the contention often made by this Commission, that some forms of rates are to be used to the exclusion of others. The justification for such schedules is to be found, however, in the injunction against unreasonable discrimination, and not in the requirement that individual rates must bear their full proportion of the costs.

We do not consider it essential that we enter further into the matter of rate schedules. The principal thing to be decided in this case, as we pointed out in the early part of this decision, is the matter of the ownership of the physical property. When that has been decided, the question of the reasonableness of the Hopkinson rate and the method of determining the demand thereunder need not be passed upon.

We conclude, then, that it is not possible for the city to acquire the business of the respondent without purchasing all of the property used and useful for the carrying on of Neenah

business. Neither does it appear advisable for the city to effect this arrangement, for no economies will result.

Time has not permitted us to go into the question of the difficulties which would be encountered by the separate ownership of plant and business. Needless to say, they would be many. Such an arrangement could only result in grave differences of opinion between city and company, principally in matters pertaining to extension of lines. Such differences usually result in constant litigation, and, for this reason, should not be encouraged.

We have pointed out the limitations which will be imposed upon the city in the acquirement of the plant and business of the respondent. It will probably be in point to note what course of action is open to the city under the statutes. This matter may be quickly disposed of.

The public utility law provides three remedies for municipalities when dealing with public-service corporations: 1. They may elect to purchase the property used and useful to the operation of these utilities. 2. They may apply to this Commission for a certificate of necessity and convenience to allow a second or competing utility to enter their boundaries. 3. They may apply to this Commission for an order prescribing reasonable rates.

Contrary to public opinion generally, these provisions of the statute afford as adequate remedies as were afforded to municipalities previous to its passage. The state policy has been shifted, however, so as to place more emphasis on the adjusting of rates than on the introduction of competition. The full intent of this feature of the statute is ably presented in *Calumet Service Co. v. Chilton*, 148 Wis. 334, 135 N. W. 131.

Stipulation was made at the time of the hearing, that, if this Commission should decide adversely to the city, it should proceed immediately to an investigation of the reasonableness of respondent's rates. Accordingly, a notice of investigation of such rates is being sent to both parties in this case.

It is therefore ordered that the complaint in this matter be, and the same is hereby, dismissed.

Dated at Madison, Wisconsin, this 28th day of January, 1915.

Railroad Commission of Wisconsin, by John H. Roemer, Halford Erickson, David Harlowe, Commissioners.

IDAHO PUBLIC UTILITIES COMMISSION.

IN RE OREGON SHORT LINE RAILROAD.

[File No. F—71; Order No. 201.]

Service — Jurisdiction — Commissions.

The Idaho public utilities act confers authority upon the Commission to require the maintenance by any public utility of its service or facilities.

Railroad service — Suspension — Snow slides.

A railroad company will not be allowed to close or suspend traffic on account of snow interference, or snow slides alone, for any longer period than is absolutely necessary to remove the same.

Railroad service — Suspension — Rock slides.

A railroad company was given permission to suspend service on a branch line for a portion of the winter months if, on account of earth or rock slides, it would be hazardous to employees or passengers, in the judgment of the superintendent of the division, to operate trains, certain other facilities being ordered for the transportation of passengers, mail, express, and freight.

[February 2, 1915.]

APPLICATION for permission to close branch line of railway for portion of winter months; granted conditionally.

The appearances are set out in the opinion.

By the Commission: The authority of the Commission to require the maintenance, by any public utility, of its service or facilities, is conferred under the provisions of § 14 of the public utilities act. In the exercise of the evident power conferred by this section, the Commission has been called upon to pass upon the application of the Oregon Short Line Railroad Company, filed January 19, 1915, for permission to close its branch line of road known as the Idaho Northern Railway from Horseshoe Bend north to its terminus, during the inclement weather and until some indefinite time, designated as "some time in the early spring," such application being based solely on the ground of safety to employees and the traveling public.

Pursuant to said application, a hearing was had at the office of the Commission in Boise, Idaho, on the 29th day of January, 1915. This hearing was continued to, and concluded on, the 30th day of January, 1915, due notice of such hearing having been

given to all parties in interest along the said line of railway. At such hearing the following appearances were entered: H. B. Thompson, representing the Oregon Short Line Railroad Company; Parker V. Lucas, representing the city of McCall; R. C. Taylor, representing the Davis estate; F. M. Kirby, representing the Thunder City, Crawford, Van Wyck, etc.; F. H. Wallace, representing the farmers and dairy interests in Long Valley.

Sworn testimony and other evidence were introduced in support of, and in opposition to, the granting of said application. The Commission being duly advised in the premises, and having fully considered the testimony and evidence presented at said hearing, concludes as follows:

1. That owing to construction difficulties not yet overcome, the operating of trains over that portion of said branch line between Banks and Smith's Ferry will probably be hazardous to employees and passengers after general thawing weather begins.

2. That regular train service may be safely continued over the entire length of said branch until February 20, 1915.

3. The trains may be safely operated from Smith's Ferry to Lakeport on said branch at all times.

4. That snow, or snow slides alone, should not be allowed to block traffic on any part of said branch.

5. That the closing of any part of said branch will be a hardship and a great inconvenience and financial loss to the people now served by said railway.

6. That mail service and transportation facilities for a large number of people can only be maintained by requiring said railroad company to operate its said branch from Smith's Ferry to Lakeport.

7. That regular train service over the entire length of said branch may be safely resumed not later than April 15, 1915.

It is therefore ordered: 1. That said Oregon Short Line Railroad Company continue and maintain its regular train service as now in operation on its branch road known as the Idaho Northern Railway from Nampa to Banks.

2. That said railroad company use every reasonable effort to continue and maintain its regular train service as now in operation over the entire length of said branch, and that snow interference, or snow slides alone, be not allowed to close or suspend

traffic on any part of said branch for any longer period than is absolutely necessary to remove the same.

3. That unless very serious land or rock slides occur to interfere with traffic on the portion of said branch line between Banks and Smith's Ferry, said railroad company maintain its regular train schedule now in effect until February 20, 1915.

4. That in event any portion of said branch be closed to traffic under the permission hereinafter granted, said railroad company keep and maintain at its Lakeport station on said branch sufficient equipment, facilities, and operating force for the transportation of passengers, mail, express matter, and freight between its Lakeport and Smith's Ferry stations, and that it maintain a regular train service between said points of not less than three round trips weekly: Provided, That if very serious land or rock slides occur between Smith's Ferry and Cascade, such transportation facilities may be limited to Cascade on the south, but every reasonable effort shall be made to maintain such transportation as far south as Smith's Ferry at all times.

5. That in event any portion of said branch line be closed to traffic under the permission hereinafter granted, said railroad company shall resume its regular train service as now in effect not later than April 15, 1915.

6. Should it be found impracticable on account of earth or rock slides to maintain train service between Banks and Smith's Ferry, or if, in the judgment of the superintendent of that division, it would be hazardous to employees or passengers to operate trains between Banks and Smith's Ferry, permission is hereby granted said railroad company to close to traffic that part of said branch between Banks and Smith's Ferry from February 20, 1915, to April 15, 1915.

A. P. Ramstedt, A. L. Freehofer, Commissioners.

IDAHO PUBLIC UTILITIES COMMISSION.

GENERAL ORDER NO. 10.

Construction and equipment — Poles and wires — Rules.

The construction of pole, wire, and cable lines of telegraph, telephone, signal, electric power, and other circuits of similar character in the P.U.R.'15A.—25.

state of Idaho, is governed by the rules and regulations of the Commission promulgated in General Order No. 10, effective March 1, 1915.

[January 21, 1915.]

ORDER adopting and promulgating rules and regulations for the construction of pole, wire, and cable lines.

GENERAL ORDER NO. 10.

By the **Commission**: In the matter of promulgating and establishing rules governing the construction of pole, wire, and cable lines, of telegraph, telephone, signal, electric power, and other circuits of similar character, and for the crossings of wires or cables of telegraph, telephone, signal, electric power, and other circuits in the state of Idaho.

The subject of uniform rules and regulations governing the construction of pole, wire, and cable lines of telegraph, telephone, signal, electric power, and other circuits of similar character, and for the crossings of wires or cables of telegraph, telephone, signal, electric power, and other circuits in the state of Idaho, being under consideration, and upon the concurrence of the utilities and electrical workers and others interested;

It is hereby ordered that the following rules and regulations be, and the same are, hereby adopted and promulgated for the government of all utilities interested therein, or affected thereby:

Regulations and Specifications Governing the Construction of
Overhead Electric Lines in the State of Idaho.

Scope.

1. These regulations and specifications shall apply to all new construction and reconstruction of overhead power, telephone, telegraph, signal, and other forms of electric lines in the state of Idaho, but do not limit the right of the Commission to order the change of any existing installation that is hazardous.

Definitions.

2. For the purpose of these regulations, certain of the terms used herein are defined as follows:

3. Line. Any aggregation of poles, towers, or other supporting structures, together with conductors and other appurtenances carried on such supports.

4. Circuit. Any overhead conductor or combination of con-

ductors which forms a metallic medium or path for the transmission of electrical energy for power or communication purposes.

5. **Power Circuit.** Any constant potential of constant current circuit used for power, lighting, railway, or similar purposes.

6. **Communication Circuit.** Any telephone, telegraph, or signal circuit used in the service of the public.

7. **Conductor.** Any overhead wire or cable which constitutes part of a power or communication circuit.

8. **Guard Wire.** Any grounded wire or cable carried upon line supports and generally occupying a position above the conductors as a shield from the effects of lightning or other electrical atmospheric disturbances.

9. **Attachment.** Any cross-arm, conductor, guard wire, guy, cable, apparatus, fixture, or other appurtenance which constitutes a part of a line, and is carried by any pole, tower, or other support thereof.

Classification.

10. For the purpose of these regulations, circuits or conductors will be designated by class as follows:

Character and Operating Voltage.

Class

- A. 1. Constant potential, alternating current, not grounded, exceeding 5,000 volts.
- 2. Constant potential, one side or neutral grounded, exceeding 2,500 volts alternating or 750 volts direct current to ground, excepting trolley contact wires.
- B. 1. Constant potential, alternating current, exceeding 750 but not exceeding 5,000 volts when ungrounded; or exceeding 433 but not exceeding 2,500 volts to ground when grounded, excepting trolley contact wires.
- 2. Constant current, series, of capacity not exceeding 7.5 amperes and voltage between terminals exceeding 750 volts.
- C. Communication, including telephone, telegraph, and signal circuits, excepting those included in class P.
- D. 1. Trolley contact wires, not exceeding 2,500 volts alternating current or 750 volts direct current.
- 2. All trolley contact wires not included in subdivision 1.

- E. 1. Constant potential grounded or ungrounded, alternating current not exceeding 750 volts between conductors or 433 volts to ground, and direct current not exceeding 750 volts between conductors or to ground, excepting trolley contact wires.
- 2. Constant current, series, of capacity not exceeding 7.5 amperes and voltage between terminals not exceeding 750 volts.
- P. Telephone, telegraph, or other signal, not exceeding 750 volts, used by the owners or operators of class A, class B, class E, or class D circuits, but not for the use of the public.

Conflicting Lines.

Definition.

11. The terms, "conflicting lines" and "conflict," are employed to designate a situation where a line is built over, under, or adjacent to another line (angle crossings excepted) at such distance that failure of the supports or attachments of one line might result in contact with the attachments of the other line. Lines located on opposite sides of a public street or highway (not an alley) shall not be considered as conflicting.

To Be Avoided if Possible.

12. So far as practicable, conflicting lines shall be avoided, and power lines shall be located on the opposite side of any street, alley, or other public highway from class C lines. No company shall construct a line which will conflict with any existing line, without first giving the owners of the existing line notice in writing sufficiently in advance to afford opportunity for consideration by interested companies of means for avoiding the conflict.

Provisions for Conflicting Construction.

13. When possible, a plan for avoiding conflict shall be agreed upon, but where avoidance is impracticable the conflicting line may be built subject to the following provisions:

(a) In case of conflict between class A and class C lines, the class A circuits shall, where practicable, be at a higher elevation than the class C circuits, and the construction of the line in the upper position, or if the circuits are at approximately the same

elevation, of both lines, in addition to meeting the general requirements of these regulations, shall conform to the requirements specified in appendix A for crossings in so far as they are properly applicable.

(b) In case of conflict between class B or E lines and class C lines, the class B or class E circuits shall, where practicable, be at a higher elevation than the class C circuits.

(c) In all cases of conflicting lines, the clearance between conductors on different supports shall be not less than 4 feet. When one line overbuilds another with poles on the same alignment, the wires of the lower line next the pole of the upper line shall be attached to the pole of the upper line in such a way as to secure the natural spacing of the lower wires as on the pole to which said wires are attached.

Position of Circuits.

Relative Vertical Position.

14. The relative positions of circuits of different classes shall, in general, be in the following order, beginning at the top: Class A (except trolley feeders), class B (except trolley feeders), class E (except trolley feeders), class C and class D. Trolley feeders may occupy either the position of their class or of class D. Where this arrangement is impracticable, the circuit not so located shall be considered, in so far as mechanical strength of construction is concerned, as included in the class of the power circuit of highest voltage occupying a position beneath it.

Positions at Crossings.

15. At crossings power circuits shall, in general, be located above class C circuits, but where this is impracticable and the class C circuit crosses above, it shall be considered, in so far as mechanical strength of construction is concerned, as included in the class of power circuit of highest voltage crossed.

Horizontal Spacing.

16. The spacing between pole pins shall be not less than 30 inches for conductors of class A or class B, and for conductors of class E, when upon the same pole with class A or class B conductors, and not less than 16 inches for conductors of classes C or P, provided that where class P conductors are so located as to have induced upon them a higher voltage than 750 they shall

be spaced as class B conductors, or a sufficient device attached thereto so as to prevent a higher voltage than 750 between wires or between wires and ground. The pin spacing for class A and class B conductors shall be not less than $14\frac{1}{2}$ inches. This regulation shall not, however, apply to conductors running vertically from underground; or to conductors running from line conductors to lamps, transformers, or switching devices carried on the same support, or to wires connected to pole top fixtures; or to drop or service wires; or to class E circuits arranged vertically upon one side of the pole, or to class C or class P conductors located upon brackets.

17. When reverse work is employed, the attachments shall be so located and maintained as to provide and keep open, on one side of the pole, and next to the pole, a vertical climbing space, the horizontal dimensions of which shall include a square of not less than 20 inches on a side; it being understood that the pole itself may be included within a corner of the climbing space so measured; provided, however, that this rule shall not apply on poles carrying class C or class E wires only. No transformers, switches, or cutouts shall be placed on poles carrying reverse arms.

Vertical Spacing.

18. When more than one cross-arm is used for supporting conductors at any pole or tower, the spacing of cross-arms from center to center shall be not less than the values in the following table:

Class.	A	B	E	P
A	3'	3'	3'	3'
B	3'	3'	3'	3'
E	3'	3'	2'	2'
P	3'	3'	2'	2'

This spacing of cross-arms shall not, however, apply to reverse arm work. Where the space between line arms is 3 feet, and reverse work is employed, reverse arms shall be placed midway between such line arms.

Vertical Clearance.

19. When conductors of any class are located above class D wires, the vertical clearance shall be not less than 4 feet.

20. The overhead clearance of conductors over railroad tracks

(not including street railways), shall, unless rendered impracticable by overhead bridges or similar obstructions, be not less than 27 feet for classes A, B, E, or P, and not less than 22 feet for class D.

Joint Use.

21. Conductors of the same class or of different classes may be carried on joint supports, provided the construction conforms to requirements agreed upon by the respective owner companies and approved by the Public Utilities Commission. When so carried the vertical clearance between power conductors and class C conductors shall be not less than 40 inches. Where class A circuits are carried on the same supports as class C circuits, the construction, in addition to meeting the general requirements of these regulations, shall conform to the requirements of appendix A for crossings in so far as they are properly applicable.

Supports.

Wooden Poles.

22. Wooden poles shall be of western cedar or other timbers of at least equal strength, and shall be sound and reasonably straight.

23. Poles shall be set to at least the following depths:

Length of Poles.	Depth in Earth.	Depth in Rock.
20 ft.	3.5 ft.	2.5 ft.
25 ft.	4 ft.	3 ft.
30 ft.	4.5 ft.	3.5 ft.
35 ft.	5 ft.	4 ft.
40 ft.	5.5 ft.	4 ft.
45 ft.	6 ft.	4.5 ft.
50 ft.	6.5 ft.	4.5 ft.
55 ft.	7 ft.	5 ft.
60 ft.	7.5 ft.	5 ft.

Attachments.

Guy Guards.

24. On streets or highways, exposed guys shall, unless located close to a fence or other structure, be marked by wooden guards or other protective devices to a height of at least 5 feet above the ground.

Guy Anchorage.

25. Guys to ground shall be connected to a well-anchored rod of rust-resisting material, and of such length that the eye of the rod

shall be above the surface of the ground, and of such size and strength, and carried to such depth, as will sustain the stress placed thereon, or to patent anchors.

26. Where a pole structure is subjected to unequal strain it shall be guyed or reinforced, or shall be of such strength in itself and set in such a way as to withstand such strain and substantially remain in position. Guy anchors shall preferably be placed at a horizontal distance from the poles they reinforce, measured at the ground line, of not less than one third the height of the point of attachment of the guy to the pole, and in case this horizontal distance be reduced the strength of the guy shall be proportionately increased.

Guy Strain Insulators.

27. Except in case of metallic or grounded supports, or of lines carrying only class A circuits of over 15,000 volts, or of lines carrying class C circuits only, strain insulators shall be placed in guys.

28. A strain insulator, when used in a guy, shall be of such design that in case it is broken the guy wire will not part, and in general shall be placed not less than 6 feet below the lowest conductor, not less than 8 feet above the ground, and, where practicable, not less than 6 feet in a horizontal direction from the pole.

Conductors.

29. Conductors shall be of copper, aluminum (with or without steel core), copper covered steel, galvanized steel, or other rust-resisting material.

30. Conductors shall have mechanical strength at least equivalent to that of soft-drawn copper wire of the following sizes:

Class.	Line Spans.	Service Spans.
A	No. 6 B & S	No. 6 B & S
B	No. 6 B & S	No. 8 B & S
C	No. 10 B & S	No. 12 B & S
E	No. 10 B & S	No. 12 B & S
P	No. 10 B & S	No. 10 B & S

No twisted pair wire of smaller conductor sizes than No. 16 B & S copper or No. 17 B & S copper-covered steel shall be used.

Cross-arms.

31. Wood cross-arms shall be of Washington fir or other suitable timber, and shall have a minimum section of $2\frac{3}{4}$ inches by

3½ inches for class C lines, and a minimum section of 3½ inches by 4½ inches for power lines. Cross-arms supporting pole type transformers of over 10 kilowatts capacity must be doubled or otherwise adequately reinforced. All wires larger than No. 6 B & S shall be dead ended in such a way as to avoid twisting strain on the cross-arm.

Crossings.

Class A Circuit.

32. Where class A circuits cross over railroad tracks (not including street railways) or over class C circuits, the construction, in addition to meeting the general requirements of these regulations, shall conform to the specification in appendix A.

Class B, E, or P Circuits.

33. Where class B or class E circuits, or class P circuits on power circuit supports cross over railroad tracks (not including street railways), the construction of lines and circuits, in addition to meeting the general requirements of these regulations, shall conform to the requirements specified in appendix A, in so far as these requirements are properly applicable to circuits of lower voltages. Also when class P circuits on power circuit supports cross over class C circuits, the clearance shall be the same as that specified for the class of circuits varying from 250 to 5000 volts.

Class C or P Circuits.

34. Where class C circuits or class P circuits not on power circuit supports cross over railroad tracks, the construction, in addition to meeting the general requirements of these regulations, shall conform to the "specifications for crossings of wires or cables of telegraph, telephone, signal, and other circuits of similar character over steam railroad rights of way, tracks, or lines of wires of the same classes," as adopted by the Association of Railway Telegraph Superintendents, May 20th, 1913, as shown by exhibit C hereto attached and made a part hereof, except that the overhead clearance and the side clearance shall be the same as specified in appendix A.

Protective Measures for Class E Circuits.

Grounding Secondaries.

35. The grounding of class E secondary circuits shall be in accordance with the National Electric Code.

Ground Conductors.

36. Wire used for grounding shall be not smaller than No. 6 B & S gauge, and the connection to the secondary circuit shall be located on the street side of customers' meters and preferably on a pole next the transformer pole, but may be placed on the transformer pole if thoroughly covered by wooden molding from the highest point thereof to a point 8 feet below the lowest line wire.

Ground Connections.

37. Ground connections shall be made to a water pipe of a metallic system, to a $\frac{3}{4}$ inch or larger galvanized steel pipe driven to permanently moist earth, to a copper plate $\frac{1}{8}$ inch thick having an area of not less than 9 square feet buried in coke, or to some other efficient device.

Relief in Special Cases.

38. For cause shown, in special cases, the Commission may afford relief from the operation of these regulations to any particular public utility when public convenience and safety will not be injuriously affected thereby and the welfare of such public utility will be subserved by modifications of any of the foregoing regulations and specifications.

Appendix.

39. The following appendix, referred to in the preceding paragraphs, is intended to be attached to and is made a part of these regulations:

Appendix A—Specifications for the construction of overhead crossings of class A power lines over lines carrying class C circuits and of class A, B, and E, power lines over railroads.

APPENDIX A

Accompanying

“Regulations and Specifications Governing the Construction of Overhead Electric Lines in the State of Idaho.”

Specifications for the Construction of Overhead Crossings of Class A Power Lines over Lines Carrying Class C Circuits and of Class A, B, and E Power Lines over Railroads.

Scope.

1. This specification shall apply to crossings of class A circuits over lines carrying class C circuits, and to crossings of class

A, B, and E circuits over railroads (not including street railways). It is not intended that this specification apply to crossings over individual twisted pair drop wires or other circuits of minor importance where equally effective protection may be secured more economically by other methods of construction.

Supports.

Location of Poles.

2. The poles or towers supporting the crossing span and the next adjoining spans shall, where practicable, be located in a straight line, and at railroad crossings, unless physical conditions or municipal requirements prevent, the side clearance of supports shall be not less than 10 feet from the nearest track rail, except that at sidings a clearance of not less than 7 feet from the nearest track rail may be allowed, it being understood that the above mentioned clearances shall be increased if necessary in order to avoid obstructing the enginemens' view of block signals, whistling posts, or other fixed signals. At loading sidings sufficient space shall be left for a driveway.

Length of Span.

3. Where class A power lines cross over class C lines, the length of the crossing spans shall, where practicable, be not greater than the normal span of the line, and the length of the next adjoining span shall, where practicable, be not greater than $1\frac{1}{2}$ times or less than $\frac{1}{2}$ the length of the crossing span. Spans of class A, B, or E power circuits supported on wood poles crossing railroad tracks, and one span adjoining them on each side, should not exceed 125 feet in length. When impracticable to obtain a span of 125 feet the length of the crossing span shall be as short as practicable, but shall not exceed 175 feet, and the material, size, and sag of conductors shall meet the requirements hereinafter specified. When the span length exceeds 125 feet the spans adjoining the crossing span shall not exceed 110 feet. Where power circuits crossing railroad tracks are supported by steel towers, the span length and generally all details of design and construction shall be mutually agreed upon by the interested owners.

Loads.

4. The conductors shall be considered as loaded uniformly throughout their length with a load equivalent to the resultant

of the dead load, the weight of a layer of ice $\frac{1}{2}$ inch in thickness and a wind pressure of 8 pounds per square foot of ice covered diameter, at a temperature of zero Fahrenheit. The weight of the ice shall be assumed as 57 pounds per cubic foot (0.033 pounds per cubic inch).

5. The poles or towers shall be considered as subjected to a wind pressure of 13 pounds per square foot on the projected area of solid or closed structures, and on $1\frac{1}{2}$ times the projected area of latticed structure.

Temperatures.

6. Computation of stresses and clearances shall be based on an assumed variation in temperature from — 20 degrees to 120 degrees Fahrenheit. For regions in which these limits would not fairly represent the extreme range, suitable modification therein shall be made.

Wooden Poles.

7. Wooden poles supporting the crossing span shall be of selected timber, reasonably straight, peeled, free from defects which would decrease their strength or durability, not less than 7 inches minimum diameter at the top, and shall meet the strength requirements set forth in Paragraph 14.

Steel Towers.

8. Structural steel for towers supporting the crossing span shall be in accordance with the Manufacturers' Standard Specifications.

9. Design and workmanship shall be in accordance with good modern practice.

10. The form of the frame shall be such that stresses may be computed with reasonable accuracy, or the strength of the tower shall be determined by actual test.

11. Construction shall be such that all parts are accessible for inspection, cleaning, and painting, and shall not permit of pockets in which water or dirt might collect.

12. The length of a main compression member shall not exceed 180 times its least radius of gyration. The length of a secondary compression member shall not exceed 220 times its least radius of gyration.

13. The minimum thickness of metal in galvanized structures

shall be $\frac{1}{4}$ inch for main members and $\frac{1}{8}$ inch for secondary members. The minimum thickness of metal in painted structures shall be $\frac{1}{4}$ inch.

Strength of Poles or Towers.

14. The poles or towers of the crossing span shall be designed to withstand, with the designated factor of safety (paragraph 43), the following simultaneous stresses:

(a) The combined stresses due to their own weight, the specified wind pressure on the poles or towers (paragraph 5), and the specified conductor loading (paragraph 4) in both the crossing span and the next adjoining spans.

(b) The stresses due to the unbalanced tension resulting from:

2 broken wires where poles or towers carry 5 wires or less.

3 broken wires where poles or towers carry 6 to 10 wires.

4 broken wires where poles or towers carry 11 or more wires.

The foregoing requirements of this paragraph shall apply also to the next adjoining poles or towers, except in cases where a failure thereof would not, under the specified conditions of loading (paragraphs 4 and 5) produce stresses in the supports of the crossing span greater than permitted in paragraph 43.

Foundations for Steel Poles or Towers.

15. Foundations for steel poles or towers supporting the crossing span shall be adequate to develop the full strength of the poles or towers against overturning.

16. In designing foundations for steel poles or towers, the weight of concrete shall be considered as 140 pounds per cubic foot. The weight of "earth" (calculated at 30 degrees from the vertical) shall be considered in good ground as 100 pounds per cubic foot. In swampy ground special measures shall be taken to prevent uplift or depression.

17. The top of a concrete foundation or casing shall extend above the surface of the ground or shall be flush with the pavement or sidewalk.

Foundations for Wooden Poles.

18. Wooden poles, where erected in a straight line, shall be set in the ground to depths not less than those shown in the following tabulation:

Length of Poles.	Depth in Earth.	Depth in Rock.
25 ft.	4.5 ft.	3. ft.
30 ft.	5. ft.	3.5 ft.
35 ft.	5.5 ft.	4. ft.
40 ft.	6. ft.	4. ft.
45 ft.	6.5 ft.	4.5 ft.
50 ft.	7. ft.	4.5 ft.
55 ft.	7.5 ft.	5. ft.
60 ft.	8. ft.	5. ft.

Where erected along a curved line, they shall be set in the ground to a depth 1 foot greater than as shown in the tabulation.

19. Where located in swampy ground the setting of wooden poles shall be suitably reinforced. This may be done by setting in barrels of broken stone or gravel, or in stone or timber footings, or by any other equally effective method.

Foundations General.

20. Where located in the sides of banks or where subject to washouts, foundations or pole settings shall be given additional depth or be protected by cribbing or rip-rap.

21. Backfilling for foundations or pole settings shall be carefully tamped or otherwise thoroughly compacted while being placed.

Guys.

Use of Guys.

22. Guys may be used in meeting the specified strength requirements for supports (paragraph 14). The number and arrangement of guys shall be determined by the conditions existing at the crossing. Where power circuits carried upon wood poles cross railroad tracks outside of villages, towns and cities, the poles supporting the crossing span shall be side guyed in both directions, if practicable, and be head guyed away from the crossing span. Braces may be used instead of guys.

Material.

23. Guys shall be of galvanized or copper covered stranded steel cable, or of galvanized rolled rods.

Anchorage.

24. Guys to ground shall be connected to a well-anchored galvanized rod of such length that the eye of the rod shall be above the surface of the ground, or to patent anchors.

Conductors.

Spacing of Conductors.

25. The normal separation of conductors for each 1,000 volts or fraction shall be not less than the values shown in the following tabulation:

Voltage of Circuit		Conductor Separation	
Exceeding	Not Exceeding	With pin or Strain Insulators	With suspension Insulators
	7,500	2.10 inches	
7,500	15,000	1.30 "	
15,000	27,000	1.10 "	1.40 inches
27,000	35,000	.95 "	1.20 "
35,000	47,000	.91 "	1.15 "
47,000	70,000	.87 "	1.10 "
70,000	88,000	.84 "	1.05 "
88,000	100,000	.80 "	1.00 "
100,000	150,000	.70 "	.88 "
150,000	180,000	.60 "	.76 "

The requirements of this paragraph do not apply to conductors of the same phase between which there is no difference of potential.

Overhead Clearance.

26. The clearance of power conductors above class C conductors shall at all times be not less under any condition of loading and temperature than the values shown in the following tabulation:

Voltage of Circuit	Length of Crossing Span		
	Less than 150 feet	150 to 300 feet	More than 300 feet
0 to 250	2 feet	3 feet	4 feet
250 to 5,000	4 "	5 "	6 "
5,000 to 7,500	4 "	5 "	8 "
7,500 to 15,000	6 "	6 "	8 "
15,000 to 70,000	6 "	6 "	9 "
Exceeding 70,000	8 "	8 "	10 "

The clearance of conductors above the tops of track rails shall at all times and under any conditions of loading and temperature be not less than 27 feet for circuits carrying voltages of 15,000 or less. For circuits exceeding 15,000 volts the clearance above track rail specified above shall be increased $\frac{3}{4}$ inch for each ad-

ditional 1,000 volts. The crossing wires shall in no case obstruct the enginemens' view of signals.

Clearance between Conductors and Supports.

27. The clearance between any conductor or live hardware and the supporting structure (insulator pins not included) under the most adverse conditions provided for in this specification (paragraphs 4 and 6), shall be not less than the values shown in the following tabulation. Where suspension insulators are used the maximum deflection of any insulator shall be considered as 45 degrees from the vertical.

Voltage of Circuit		Minimum Clearance with Pin, Strain, or Suspension Insulators
Exceeding	Not Exceeding	
	8,000	2. inches
8,000	15,000	.250 inches each 1000 V
15,000	35,000	.225 inches each 1000 V
35,000	70,000	.215 inches each 1000 V
70,000	.....	.200 inches each 1000 V

Material.

28. Conductors shall be of copper, aluminum (with or without steel core), copper covered steel, galvanized steel strand or other rust resisting material; provided, however, that galvanized steel shall not be used in localities where moisture or other conditions would cause excessive corrosion.

Size.

29. The minimum allowable sizes for conductors are as follows: Copper or Copper Clad Steel:

Spans less than 150 ft. No. 6 B & S Gauge.

Spans 150 ft. and over No. 4 B & S Gauge.

Aluminum (with or without Steel Core):

Spans of any length—No. 1 B & S Gauge.

Galvanized Steel Strand:

Spans of any length— $\frac{1}{4}$ inch diameter.

For spans of 150 feet or over, all conductors shall be stranded.

Strength.

30. Conductors shall be designed to withstand with the designated factor of safety (paragraph 43) the specified loading (paragraph 4).

31. The conductor used in the crossing span shall be continued

of the same size and type for at least one span on either side and shall not be spliced in the crossing span.

32. The normal mechanical tension in the conductors shall be the same generally in the crossing span and in the next adjoining spans.

Insulators.

Material.

33. Insulators shall be of porcelain.

Design.

34. Insulators shall be designed to flash over without failure by puncture.

35. Insulators shall be designed to withstand without puncture or flash-over at a frequency of 60 cycles the normal circuit voltage multiplied by the following factors:

Voltage of Circuit		Factor Dry	Factor Wet
Exceeding	Not Exceeding		
	9,000	4.	3.
9,000	27,000	3.5	2.5
27,000	47,000	3.	2.25
47,000	70,000	2.75	2.00
70,000	.....	2.5	1.75

By the term "wet" is meant a condition equivalent to a precipitation of $\frac{1}{8}$ inches of rain per minute at an angle of 45 degrees to the axis of the insulator.

Tests.

36. Each completed pin insulator for line voltage over 15,000 and each completed suspension insulator disc shall be subjected to a routine factory test at dry flash-over voltage and at a frequency of 60 cycles for 3 consecutive minutes, or this test may conform to any other method generally sanctioned by good modern practice.

Voltage Measurements.

37. Test voltages shall be determined by methods conforming to the standards of the American Institute of Electrical Engineers.

Other Attachments.

Cross-arms.

38. Cross-arms on the crossing poles or towers, including their P.U.R. 15A.—26.

fastening to the poles or towers, shall be designed to withstand with the designated factor of safety (paragraph 43) the stresses produced by the conductors under the specified loading (paragraph 4) combined with the unbalanced tension resulting from one conductor broken at the pin farthest from the pole.

Pins.

39. Insulator pins shall be of steel, wrought iron, or malleable iron and, when necessary, shall be galvanized or otherwise protected from corrosion. Cast-iron pin bases may be used. Pins of treated locust, eucalyptus, or other equally durable wood may be used when voltage of circuit does not exceed 15,000.

Conductor Fastenings.

40. The method of supporting and securing conductors at crossing spans to the insulators and crossarms shall be such as:

(a) To hold the conductors under specified loading (paragraph 4) to the supporting structures in case of damaged insulators, without allowing an amount of slip which would materially reduce the specified clearance (paragraph 26); and

(b) To protect the conductors at the insulators from burning or the effects of arcs or in case a conductor is burned in two at an insulator to prevent slipping which would reduce the specified clearance (paragraph 26), over class C conductors by more than 25 per cent or over railroad tracks to less than 25 feet.

Strength.

41. Insulators, pins, and conductor fastenings (including clamps, ties, and dead ends) shall be designed to withstand, with the designated factors of safety (paragraph 43), the mechanical tension in the conductors under the specified loading (paragraph 4).

Guard Wires.

42. Overhead guard wires, or cables, when used, shall conform as to material, size, and strength to the requirements of this specification for conductors (paragraphs 28, 29, and 30).

General Requirements.

Mechanical Factors of Safety.

43. The ultimate unit stress divided by the allowable or working unit stress shall at no time be less than the values shown in the following tabulation:

Wires, cables and conductors attachments	2
Metal pins	2½
Pole line hardware	2½
Insulators	3
Guys	3
Wooden poles	4
Wooden crossarms and pins	1
Structural steel poles, towers and crossarms	2½
Reinforced concrete poles and crossarms	4

Allowable working unit stresses, as given in exhibit A, are derived by dividing generally approved ultimate unit stresses by the factors of safety shown above.

Protective Coatings.

44. All structural steel shall be thoroughly cleaned at the shop and shall be galvanized or painted as follows:

Painting.

(a) Painting shall consist of one complete shop coat, one field coat on all contact surfaces before assembling, and one complete field coat after assembling. Before painting in the field, the surface of the metal shall again be thoroughly cleaned of all dirt, grease, etc., and no painting shall be done in freezing or rainy weather.

Galvanizing.

(b) Galvanized material shall meet the requirements specified by the American Telephone & Telegraph Company or any other standard generally sanctioned by good modern practice. Sherardizing of small parts is permitted. Bolt holes in galvanized material shall be made before galvanizing.

Falling Trees.

45. The crossing span and the next adjoining spans shall so far as practicable be kept free from trees which might fall into the line.

Fire Hazard.

46. The poles or towers of the crossing span shall be located as far as practicable from inflammable material or structures.

Ground Connections.

47. Where used to meet the requirements of paragraph 40, ground conductors shall not be smaller than No. 6 B & W G, and shall be connected to well-made grounds.

Alternative Types of Construction.

48. In lieu of the preceding requirements of this specification

other methods of crossing may be used, provided they be mutually agreed upon by the companies at interest and approved by the Public Utilities Commission.

Exhibit.

49. The following exhibit, referred to in paragraph 43, is intended to be attached to and is made a part of this specification:

Exhibit A—Working Unit Stresses.

Exhibit A.

Working Unit Stresses.

Obtained by dividing approved ultimate unit stresses by the factors of safety given in paragraph 43.

	Lbs. per Sq. Inch
Structural Steel:	
Tension (net section)	24,000
Shear	16,000
Compression	24,000—75 1

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Bolts, Rivets, Pins:	
Shear	16,000
Bearing	32,000
Bending	24,000

Conductor:

Copper, hard-drawn, solid B & S gauge 4-0, 3-0, 2-0	25,000
B & S gauge 1-0	27,500
B & S gauge No. 1	28,500
B & S gauge No. 2, 4, 6	30,000
Copper, soft-drawn, solid	17,000
Copper hard-drawn, stranded	30,000
Copper soft-drawn, stranded	17,000
Aluminum hard-drawn, stranded, under 4-0 B & S gauge	12,000
4-0 B & S gauge and over	11,500

	Working Values For Bending
Untreated Timber:	Lbs. Per Sq. In.

Eastern White Cedar	900
Chestnut	1275
Washington Cedar	1275
Idaho Cedar	1275
Port Oxford Cedar	1275
Long-Leaf Yellow Pine	1500
Short-Leaf Yellow Pine	1200
Douglas Fir	1350
White Oak	1425
Red Cedar	1050
Bald Cypress (Heartwood)	1200
Redwood	975
Catalpa	750
Juniper	825

Values based upon factor of safety of 4 compression working values equal bending working values multiplied by (1—L)

60 D

L=Length in inches.

D=Least Side, or diameter, in inches.

EXHIBIT C

Specifications for Crossing of Wires or Cables of Telegraph, Telephone, Signal and Other Circuits of Similar Character Over Steam Railroad Rights of Way, Tracks or Lines of Wires of the Same Classes.

1. Scope.

These specifications cover the construction and maintenance of lines of aerial wires or cables of telegraph, telephone, signal, and all other electric wires of similar character crossing steam railroad rights of way, tracks, or lines or wires of the classes mentioned above. They prescribe the standard practice to be followed. In matters not specifically prescribed, or when local conditions make the prescribed practice impracticable, they shall be met by methods that will provide equivalent security and protection of life and property.

Wires covered by these specifications shall not carry more than 550 volts.

2. Drawings.

Complete drawings shall be furnished in duplicate before construction is commenced. These drawings shall show the general plan of the right of way, tracks, and wires to be crossed and the construction proposed, including the locations of the poles supporting the crossing span and the adjoining spans on either side of the crossing span, the number, kind and size of wires, and the proposed clearances of the existing tracks and wires.

3. Location of Poles.

(a) Spans crossing railroad rights of way preferably should be supported upon poles placed outside of the right of way; but spans over tracks, and one span adjoining them on each side, should not exceed 125 feet in length. When impracticable to obtain a span of 125 feet the length of the crossing span shall be as short as practicable, but shall not exceed 175 feet, and the material size and sag of conductors shall meet the requirements hereinafter specified. When the span length exceeds 125 feet the spans adjoining the crossing span should not exceed 110 feet.

(b) Wherever practicable, the poles supporting the crossing span and the adjoining span on each side thereof shall be in a

straight line and the angle between the crossing line and the railroad tracks or pole line shall not be less than 45 degrees.

(c) The poles shall be located as far as practicable from inflammable materials or structures.

(d) The side clearance shall not be less than 8 feet from the nearest rail of the main track, nor less than 6 feet from the nearest rail of any side track.

4. Position and Clearance of Wires and Cables.

(a) Wires and cables shall give a clearance of not less than 25 feet above the rail, under the most unfavorable conditions of temperature and loading.

(b) The clearance of wires and cables from any existing wire shall not be less than 2 feet, under the most unfavorable conditions of temperature and loading.

5. Poles.

Wooden poles shall be of one piece of selected timber, peeled, reasonably straight, and free from defects which would decrease their strength or durability. Poles of various kinds of timber shall have the following dimensions at the top and 6 feet from the butt:

EASTERN WHITE CEDAR:

	Length of Poles
Minimum Top Circumference	..
Min. Circumference 6 ft. from butt	20'
	22'
	25'
	30'
	35'
	40'
	45'
	50'
	55'
	60'

WESTERN CEDAR:

	Length of Poles
Minimum Top Circumference	..
Min. Circumference 6 ft. from butt	20'
	22'
	25'
	30'
	35'
	40'
	45'
	50'
	55'
	60'

CHESTNUT:

Length
of Poles

Minimum Top Circumference	..
Min. Circumference 6 ft. from butt	20'
	22'
	25'
	30'
	35'
	40'
	45'
	50'
	55'
	60'
	*55' and

Not Over 12 Wires	Not Over 20 Wires	Not Over 40 Wires	Not Over 80 Wires
17½"	18½"	22"	24"
25½"	27"	...	...
27"	28½"	30"	...
28"	30"	32"	36"
31"	33"	36"	40"
34"	36"	38"	43"
37"	40"	43"	47"
40"	43"	47"	50"
42"	46"	50"	53"
45"	49"	53"	56"
...	52"	56"	59"

Not Over 12 Wires	Not Over 20 Wires	Not Over 40 Wires	Not Over 80 Wires
18½"	22"	25"	28"
24"	26"	...	...
25"	27"	30"	...
26"	28"	31"	34"
28"	30"	34"	37"
30"	32"	36"	40"
32"	34"	38"	43"
34"	36"	40"	45"
36"	38"	42"	47"
38"	40"	44"	49"
39"	41"	46"	52"

Not Over 12 Wires	Not Over 20 Wires	Not Over 40 Wires	Not Over 80 Wires
20"	20"	22"	24"*
24"	27"	...	...
25"	28½"	31"	...
27"	30"	33"	37"
31"	33"	36"	40"
35"	36"	40"	43"
39"	40"	43"	45"
43"	43"	47"	48"
46"	46"	50"	51"
...	49"	53"	54"
...	...	56"	57"

60' poles to carry not over 80 wires, 22"

Other Kinds:

Poles of other kinds of timber or other material and construction shall have at least the same strength and durability as those specified above.

6. Wire Loads.

Each aerial telegraph, telephone, or signal wire shall be counted as one wire, without regard to size or kind, up to and including No. 8 B. W. G. Wires of larger size shall be considered as the number of No. 8 B. W. G. copper wires to which they are equivalent in weight. The number of aerial wires equivalent to a cable shall be determined by multiplying the circumference of the cable, in inches, by 3.

Each twisted pair shall be considered as one wire, and each messenger wire supporting twisted pair wiring shall be considered as one wire. Not more than two messenger wires shall be attached to either pole of the crossing span.

7. Setting Poles.

Poles shall be set to the following depths:

Length of Poles	Depth in Earth	Depth in Solid Rock
20'	4'	3'
22'	4½'	3'
25'	5'	3'
30'	5½'	3½'
35'	6'	4'
40'	6'	4'
45'	6½'	4½'
50'	7'	4½'
55'	7½'	5'
60'	8'	5'

Great care shall be taken to secure firm foundations. Exposure to washouts shall be avoided. Poles should not be set in a sloping bank, but if it be unavoidable, the depth of each hole shall be measured from the lowest side of the opening. When the slope of the bank is greater than 45 degrees, or when the earth is so soft that it is possible that the pole may press out of the bank, the pole shall be set 6 inches deeper than is specified in the above table. Wherever ordinary methods do not provide secure setting for poles, artificial foundations and extraordinary methods shall be used to secure stability.

Holes shall be dug large enough to admit the poles without stabbing or hewing, and shall be full size at the bottom to allow the use of tampers. The dirt shall be filled in evenly around the poles and thoroughly tamped as the holes are filled. Soil shall then be piled around the poles above the surface and firmly packed. Poles set in rock shall have the rock firmly wedged around them.

8. Fitting Poles.

The top of each pole shall be roofed.

On round poles gains shall be provided for all cross-arms. They shall be of proper width for the cross-arms used, and $\frac{1}{2}$ inch deep.

The center of the upper gain shall be at least 10 inches below the apex of the roof.

9. Guys.

(a) Poles, supporting the crossing span shall be side-guyed in both directions, if practicable, and be head-guyed away from the crossing span. Braces may be used instead of guys.

(b) Guys shall be of galvanized steel wire or stranded steel cable, and their strength and number shall be as follows:

Number of Wires	Strength and Number of Head Guys	Strength and Number of Side Guys
1 to 2 inclusive	1 No. 6 B. W. G. steel wire	1 No. 6 B. W. G. steel wire each side.
3 to 12 inclusive	1 4000 lbs.	1 4000 lbs. each side.
13 to 40 inclusive	1 6000 lbs.	1 6000 lbs. each side.
41 to 50 inclusive	1 10000 lbs. or 2 6000 lbs.	1 6000 lbs. each side.
51 to 80 inclusive	1 16000 lbs. or 2 10000 lbs.	1 10000 lbs. or 2 6000 lbs. each side.

Guys shall be attached to galvanized iron rods of the following dimensions:

Size of Guy	Size of Guy Rod
No. 6 B. W. G. steel wire	6"x $\frac{1}{2}$ "
4000 lbs. strand	6"x $\frac{1}{2}$ "
6000 lbs. strand	8"x $\frac{1}{2}$ "
10000 lbs. strand or two 6000 lbs. strand	8"x $\frac{1}{2}$ "
16000 lbs. strand or two 10000 lbs. strand	9"x $\frac{1}{2}$ "

(c) Anchor rods shall be fastened to anchor logs of sound materials. Excavations in earth for anchor logs shall be of the dimensions given in the following table, depending on the sizes of guy rods and anchor logs used:

No. of Guy Rods	Size of Guy Rods	Depth of Excavation for Anchor Logs	Length and Breadth of Anchor Logs
1	$\frac{1}{2}$ inch	$4\frac{1}{2}$ ft.	5 ft. x 6 in.
		4 ft.	{ 5 ft. x 8 in. 7 ft. x 6 in.
		$3\frac{1}{2}$ ft.	{ 5 ft. x 12 in. 7 ft. x 9 in. 9 ft. x 7 in.
1	$\frac{3}{8}$ inch	6 ft.	{ 5 ft. x 10 in. 7 ft. x 7 in.
		5 ft.	{ 5 ft. x 16 in. 8 ft. x 10 in.
		4 ft.	{ 5 ft. x 23 in. 8 ft. x 14 in. 10 ft. x 12 in.
2	$\frac{3}{8}$ inch	6 ft.	{ 5 ft. x 14 in. 6 ft. x 12 in. 7 ft. x 10 in.
		5 ft.	{ 6 ft. x 10 in. 8 ft. x 14 in. 9 ft. x 12 in.
		6 ft.	{ 6 ft. x 16 in. 8 ft. x 14 in. 9 ft. x 12 in.
1	$\frac{3}{4}$ inch	6 ft.	6 ft. x 12 in.

The length and width of each excavation shall be as small as possible, especially at the surface of the ground.

(d) Guy stubs may be used only where it is necessary to raise guys above obstacles or to prevent the obstruction of thoroughfares. They shall be good, strong poles. In no case shall the guy stub be smaller in diameter at the top than the pole it supports. They shall be set to lean away from the poles they reinforce, and shall be anchor guyed with guys equivalent to the pole guys of the poles they support except that when a stub cannot be anchored an extra large stub shall be used and it shall be set at least 6 feet in the ground and be braced by a footing or underground brace of proper dimensions.

In general, the method of anchoring, location of anchors, and depth and character of setting, shall be such as will render effective the full strength of the guy.

Guy anchors shall be placed at a distance from the poles they

reinforce, measured at the ground line, of not less than $\frac{1}{3}$ the height of the guy above the ground at the pole.

On poles carrying one or two cross arms, both head and side guys shall be attached under the upper cross arm. On poles carrying more than two cross arms the first head guy shall be attached below the second cross arm and successive head guys under the fourth and sixth cross arms. On poles carrying more than two cross arms, side guys shall be attached below the second cross arm.

Stranded guys shall be attached to guy rods with thimbles, and fastened as shown in the following table:

Kind of Strand	Number of Clamps	
	Dead Ended on Pole or Stub	Dead Ended on Thimble
4,000 lbs.	1 Two-bolt or 1 three-bolt	1 Two-bolt or 1 three-bolt
6,000 lbs.	1 three-bolt	1 three-bolt
10,000 lbs.	2 three-bolt	2 three-bolt
16,000 lbs.	2 three-bolt	3 three-bolt

The end of the guy attached to the pole shall be wrapped twice around the pole, and the wrapping held in place on the back of the pole by staples or their equivalent.

(c) Braces shall have top dimensions not less than the top dimensions of the poles they reinforce. Each brace shall be set so that the "lead" will not be less than $\frac{1}{3}$ the height of the brace above the ground, measured horizontally at the ground line, of the pole supported, shall be attached to the pole it braces, for one arm, just below the first gain, for two arms, just below the second gain, for four arms or more, just below the fourth gain, and be fastened by a cross arm bolt placed at the lower end of the heel bevel where the brace is in contact with the pole.

The butt of each push brace shall be set at least $3\frac{1}{2}$ feet in the ground, and be supported on planks, logs, large stones, or solid rock ledge.

The butt of each push and pull brace shall be set to a depth of at least 6 feet in the ground and a cross log at least 5 feet long, and not less than 8 inches in diameter shall be attached to it by a cross-arm bolt not less than 8 inches from the butt of the brace. When the pole carries more than 20 wires, 5 wraps of No. 8 B.

W. G. galvanized iron wire shall be placed around the pole and brace immediately below their junction.

10. Cross-Arms.

(a) Description.

Wooden cross-arms shall be of sound material, preferably western fir of cross-section not less than $2\frac{3}{4} \times 3\frac{3}{4}$ inches for 6 foot arms or shorter, $3 \times 4\frac{1}{4}$ inches for arms longer than 6 feet. Other timber may be used provided it is equal to western fir of these dimensions in strength and durability. Arms shall not exceed 10 feet in length and shall not support more than 10 wires.

(b) Method of Attaching to Poles.

Double cross-arms shall be used on all the poles supporting crossing spans, and shall be so attached as to be maintained at right angles to the poles. Each pole shall be gained on both sides and each pair of cross-arms fastened to the pole with one $\frac{5}{8}$ inch cross-arm or through bolt. Cross-arm braces must be attached to at least one of each pair of double cross-arms. Blocks of the same section as and preferably consisting of pieces of cross-arms or of iron pipe, of such length as to fit tightly, shall be placed between each pair of double arms and 8 inches from each end thereof and secured in place by $\frac{5}{8}$ inch cross-arm or through bolts extending through both arms and lengthwise through the blocks or pipes. Each bolt shall be provided with two square washers,—one to be placed under the head of the bolt and the other between the nut and the cross arm. When pipe is used two additional washers shall be provided, one to be placed at each end of the pipe.

(c) Cross-Arm Braces.

Cross-arm braces shall be steel or iron not less than $\frac{3}{8} \times 1\frac{3}{8} \times 26$ inches long, each secured to the pole by a fether drive screw or lag bolt not less than $4 \times \frac{1}{2}$ inch and to the cross-arm by a lag bolt not less than $2\frac{1}{4}$ " long or a carriage bolt not less than $4 \times \frac{3}{8}$ inches, except that when the arms are so spaced that the braces cannot be attached to the poles in this manner, they shall be fastened vertically to the arms at points situated two-thirds of the distance from the center of the pole to the end of the arm, and in addition a pair of braces shall be attached in the usual manner to the bottom arm and the pole.

11. Pins.

The pins used on the arms next to the crossing shall be of steel, combination wood and metal or locust.

(a) Steel Pins.

A steel pin may be a steel spindle $8\frac{1}{2} \times \frac{1}{2}$ inches, except shoulder, which is $\frac{3}{8}$ inches with $1\frac{1}{4}$ inch base, together with round washer, nut and cap of split oak wood, or other device of equal strength and durability.

(b) Combination Wood and Metal Pins.

A combination wood and metal pin may be a wooden pin, minimum diameter of shank $1\frac{1}{4}$ inches, maximum length 9 inches, with a hole bored lengthwise through its center in which is inserted a $\frac{1}{2}$ inch bolt, 10 inches long, equipped with a $1\frac{1}{2}$ inch washer, or other device of equal strength and durability. The wood in the pin shall be equal to locust in strength and durability.

(c) Locust Pins.

Locust pins are to be of sound, straight grain locust, minimum cross section of shank $1\frac{1}{4}$ inches, maximum length 8 inches.

12. Hardware.

All pole line hardware shall be galvanized; and when exposed to corrosive influences materially greater than those resulting from the action of the natural elements, steel pins shall be galvanized, or heavier pins than the standard specified in section 10 of these specifications shall be used. Galvanizing shall be applied in accordance with the specifications for galvanizing iron and steel shown in the appendix.

13. Insulators.

Each insulator shall be of such pattern and design that when mounted it will withstand, without injury or without being pulled off the pin, the maximum stress to which it will be subjected with conductor attached, under the most unfavorable conditions of temperature and loading.

14. Wire.

(a) Kinds and Sizes.

The line wires in the crossing span and in the next adjoining span on each side thereof shall be of galvanized iron, hard drawn copper, or of copper covered steel of specifications satisfactory to

the parties. Iron wire shall not be used where the exposure to corrosive influences is materially greater than that resulting from the action of the natural elements. The minimum size of wire which may be used at any crossing shall be as given in the following table:

Length of Crossing Span	Galvanized Iron Wire	Hard Drawn Copper Wire
150 ft. or less	No. 10 B. W. G.	No. 10 B. & S.
151 ft. to 175 ft.	No. 8 B. W. G.	No. 9 B. & S.

Twisted pair wire, when not supported by messenger wire, shall be of hard drawn tinned copper, not smaller than No. 14 B. & S. Gauge, or of tinned copper covered steel of specifications satisfactory to the parties, not smaller than No. 17 B. & S. Gauge. In no case shall twisted pair wire be used in spans longer than one hundred (100) feet without a messenger wire support.

No joint or splice shall be permitted in any of the crossing spans.

(b) Sags.

The minimum sag of wires in crossing spans shall correspond to the span length and the temperature at which it is strung, as specified in the following table:

Length of Span	Temperature.						
	100° F	80° F	60° F	40° F	20° F	0° F	-20° F
75'	4½"	3"	2½"	2"	2"	1½"	1"
100'	7"	5½"	4½"	4"	3"	2½"	2"
115'	9"	7"	5½"	4½"	3½"	3"	2½"
125'	11"	8½"	7"	6"	5"	4"	3½"
150'	14"	11½"	9"	7½"	6½"	5½"	5"
175'	18"	15"	12"	10"	9"	7½"	6½"

(c) Method of Attaching.

Each wire shall be attached to each insulator of its pair upon the double arm.

(d) Ties.

Tie wires for copper or copper covered steel line wire shall be of the same gauge as the line wire and of soft copper or of hard drawn copper which has been thoroughly annealed. Iron tie wires for No. 8 B. W. G. line wire or larger shall be No. 9 B. W. G. For smaller sizes of iron wire the tie wires shall be of the same gauge as the line wires.

15. Cables.

(a) Size of Strand.

Galvanized steel stranded cable having a breaking strength of not less than 6000 pounds shall be used to support conductor cable of 50 pairs of No. 19 B. & S. Gauge copper wire or its equivalent and smaller, of not less than 10,000 pounds breaking strength for pairs in excess thereof up to 100 pairs No. 19 B. & S. Gauge copper wire or its equivalent, and not less than 16,000 pounds breaking strength for larger sizes.

(b) Sag.

Cables shall be suspended with minimum sag as follows:

Span in Feet	Minimum Sag In Inches.
80 or less	16
90	20
100	22
110	26
120	30
130	34
140	40
150	44
175	62

16. Inspection.

Every facility for the inspection of the materials and workmanship shall be furnished the Railroad Company.

17. Maintenance.

The crossing shall be maintained in safe condition. The poles, cross-arms, insulators, guys, wires and other parts and materials used in the structure of the crossing shall be periodically inspected and all defects shall be promptly repaired by the owner of the line. The guys and anchors shall be maintained so that the guys are kept taut and serve the purpose for which they are intended. The line wires shall be kept to the proper sag. Underbrush, grass, or other inflammable material shall be kept removed from the poles for a sufficient distance to reduce the fire hazard to the minimum.

APPENDIX.

Specifications for Galvanizing for Iron or Steel.

These specifications give in detail the test to be applied to galvanized material. All specimens shall be capable of withstanding these tests.

A. Coating. The galvanizing shall consist of a continuous coating of pure zinc of uniform thickness, and so applied that it adheres firmly to the surface of the iron or steel. The finished product shall be smooth.

B. Cleaning. The samples shall be cleaned before testing, first with carbona, benzin, or turpentine, and cotton waste (not with a brush), and then thoroughly rinsed in clean water and wiped dry with clean cotton waste.

The sample shall be clean and dry before each immersion in the solution.

C. Solution. The standard solution of copper sulphate shall consist of commercial copper sulphate crystals dissolved in cold water, about in the proportion of thirty-six parts, by weight, of crystals to 100 parts, by weight, of water. The solution shall be neutralized by the addition of an excess of chemically pure cupric oxide (CuO). The presence of an excess of cupric oxide will be shown by the sediment of this reagent at the bottom of the containing vessel.

The neutralized solution shall be filtered before using by passing through filter paper. The filtered solution shall have a specific gravity of 1.186 at 65 degrees Fahrenheit (reading the scale at the level of the solution) at the beginning of each test. In case the filtered solution is high in specific gravity, clean water shall be added to reduce the specific gravity to 1.186 at 65 degrees Fahrenheit. In case the filtered solution is low in specific gravity, filtered solution of a higher specific gravity shall be added to make the specific gravity 1.186 at 65 degrees Fahrenheit,

As soon as the stronger solution is taken from the vessel containing the unfiltered neutralized stock solution, additional crystals and water must be added to the stock solution. An excess of cupric oxide shall always be kept in the unfiltered stock solution.

D. Quantity of Solution. Wire samples shall be tested in a glass jar of at least two (2) inches inside diameter. The jar without the wire samples shall be filled with standard solution to a depth of at least four (4) inches. Hardware samples shall be tested in a glass or earthenware jar containing at least one half ($\frac{1}{2}$) pint of standard solution for each hardware sample.

Solution shall not be used for more than one series of four immersions.

E. Samples. Not more than seven wires shall be simultaneously immersed, and not more than one sample of galvanized material other than wire shall be immersed in the specified quantity of solution.

The samples shall not be grouped or twisted together, but shall be well separated so as to permit the action of the solution to be uniform upon all immersed portions of the samples.

F. Test. Clean and dry samples shall be immersed in the required quantity of standard solution in accordance with the following cycle of immersions.

The temperature of the solution shall be maintained between 62 degrees and 68 degrees Fahrenheit at all times during the following test:

First. Immerse for one minute, wash and wipe dry.

Second. Immerse for one minute, wash and wipe dry.

Third. Immerse for one minute, wash and wipe dry.

Fourth. Immerse for one minute, wash and wipe dry.

After each immersion the samples shall be immediately washed in clean water having a temperature between 62 degrees and 68 degrees Fahrenheit, and wiped dry with cotton waste.

G. Rejection. If after the test described in Section "F" there should be a bright metallic copper deposit upon the samples, the lot represented by the sample shall be rejected.

Copper deposits on zinc or within one inch of the cut end shall not be considered causes for rejection.

In the case of a failure of only one wire in a group of seven wires immersed together, or if there is a reasonable doubt as to the copper deposit, two check tests shall be made on these seven wires and the lot reported in accordance with the majority of the sets of tests.

Note.

The equipment necessary for the tests herein outlined is as follows:

Filter paper.

Commercial copper sulphate crystals.

Chemically pure cupric oxide (CuO).

Running water.

Warm water or ice as per needs.

Carbena, benzine, or turpentine.

P.U.R.'15A.—27.

Glass jars at least 2 inches inside diameter by at least $4\frac{1}{2}$ inches high.

Glass or earthenware jars for hardware samples.

Vessel for washing samples.

Tray for holding jars of stock solution.

Jars, bottles and porcelain basket for stock solution.

Cotton waste.

Hydrometer cylinder 3 inches diameter by 15 inches high.

Thermometer with large Fahrenheit scale correct at 62 and 68 degrees.

Hydrometer correct at 1.186 at 65 degrees Fahrenheit.

It is further ordered, that the rules and regulations herein adopted become effective from and after March 1, 1915.

It is further ordered, that a copy of these rules and regulations as adopted, and as embodied in printed form known as General Order No. 10, duly authenticated by the secretary of this Commission be filed in its archives, and that said copy so authenticated and filed shall be deemed an original record thereof.

Done in open session at Boise, Idaho, this 21st day of January, 1915.

Public Utilities Commission of the State of Idaho, by A. P. Ramstedt, John W. Graham, A. L. Freehafer, Commissioners.

MISSOURI PUBLIC SERVICE COMMISSION.

T. B. HICKMAN

v.

COLUMBIA TELEPHONE COMPANY.

[Case No. 195.]

Rates — Rural telephone — Nonsubscriber charge — Five-minute rule.

A rule of a telephone company, prohibiting subscribers on its rural lines, and members of their families, from talking to nonsubscribers without the payment of a toll charge of 5 cents per message, having, upon complaint, been abolished by the company, a substituted rule limiting the charge to calling parties known to be nonsubscribers, and aiming to restrict conversations to five minutes, was held reasonable.

[January 28, 1915.]

PROCEEDING to compel additional rule providing toll charge for certain rural telephone messages; voluntary abolition of rule by company and substitution of new rule therefor.

Appearances: N. T. Gentry and J. C. Gillespie for complainant; and W. M. Williams and McBaine & Clark for defendant.

OPINION.

Atkinson, Chairman: This case was heard at the same time and with cases Nos. 69 and 282. The complaint of T. B. Hickman is against the enforcement of a rule of defendant, Columbia Telephone Company, a corporation, prohibiting subscribers on its rural lines and the members of their families from talking to non-subscribers without the payment of a toll charge of 5 cents per message by such rural subscriber.

The gist of the complaint alleges that "subscribers to farm lines are not allowed to talk to persons in Columbia, not subscribers, without paying an extra charge, although such persons may be visiting, rooming, or boarding in a private residence, boarding house, or hotel, or stopping at a business house which does pay for a telephone."

The proof of the hearing fully established the allegations of the complaint. Defendant filed with the Commission and published a rule that a toll charge of 5 cents per message is made for a rural subscriber calling a nonsubscriber. The proof disclosed that it is the practice of defendant company to handle all calls to and from its rural subscribers over its toll board at Columbia, where it operates a city exchange, and have all such messages supervised by the operator. The rural resident subscribers are charged \$18 per annum for telephone rent, which under the rules of the company entitle them to talk to all subscribers in the Columbia exchange as well as to other rural subscribers which connect through said exchange. In the city of Columbia, private residences using party lines are charged \$18 per annum, the same as rural subscribers. Counsel for defendant states in their brief that defendant company "for practical reasons, and because it does not, to the same extent, interfere with the service, there is no attempt made to confine the use of telephones in the town to the subscribers," as is sought to be done by the rule under consideration relating to rural subscribers.

Mr. J. A. Hudson, manager of defendant company, testified that the rule complained of was adopted on the rural lines for the protection of the service. That a large number of rural subscribers had telephones on the same line, and that if such subscribers were permitted to call parties who were nonsubscribers the service to the rural subscribers would be impaired. On the other hand, a number of rural subscribers testified that they did not desire such a rule, and that [the] same had not been promulgated at their request, and that they desired the abrogation of said rule which prohibited them from calling nonsubscribers at telephones in the city of Columbia, such as set forth in the complaint. Defendant offered further evidence tending to prove that from a financial standpoint it cost the company more to enforce the rule than the receipts amounted to from its enforcement. That the average receipts from the tolls for the year of the rural lines amounted to only 80 or 90 cents a month. Defendant also offered proof in justification of the reasonableness of the rule under consideration requiring subscribers of rural telephones to pay a toll charge of 5 cents per message to talk to nonsubscribers. That it was not practicable to permit subscribers to call nonsubscribers and to prohibit nonsubscribers from calling subscribers. That it was found that in Columbia, where there are several thousand students in the town the greater part of the year, that many of the young people, members of the families of the rural subscribers, by arrangement, did the calling, and the lines were overloaded by frequent and lengthy calls upon matters less important than the business the rural subscribers wanted to transact over the rural lines.

From the testimony in this case there is no doubt but that the rural service of the defendant company is as good as any given in the state by any other telephone company covering the same amount of territory.

A number of witnesses testified that it was considered correct telephone principles that none but subscribers should be permitted to use the telephones in exchanges, and that a subscriber had no right to call anyone but a subscriber of the telephone system without the payment of an extra charge. Witness Johnson, a telephone engineer of wide experience, admitted in his testimony that he did not know of a rule being enforced anywhere

else similar to the one complained of, notwithstanding that telephones were to be used only by subscribers. In other words, we gather from the great weight of the testimony in this case that the enforcement of such a rule is impractical, if not unreasonable or unjust. When a nonsubscriber is stopping at a hotel, residence, or business house of a subscriber, there is no good reason why a rural subscriber who is entitled to the benefits of the telephone exchange should not be allowed to call such person. Of course any collusive arrangement between a subscriber and a nonsubscriber to the effect that the subscriber should do the calling to avoid the payment of a charge by the nonsubscriber would be fraudulent, and the company would have the right to prohibit any such collusive arrangement.

There can be no doubt but what the Commission has power and authority, under ¶ 2 of § 93 of the public service commission law, to prohibit unjust or unreasonable rules or regulations of a telephone company, and to prescribe in lieu thereof reasonable and just rules or regulations to be observed by such companies.

On July 8, 1914, and after the taking of much testimony in this cause, defendant company abrogated the rule against which the complaint was made by adopting the following rule: Chief Operator Columbia Telephone Company:—

Suspend the system of supervision of farm-line service which we have exercised with a view to restricting the free service over these lines to actual subscribers. Of course when calling parties are known to be nonsubscribers, the usual message fee should be collected, but it will not be necessary to secure the name of callers, unless believed to be nonsubscribers.

Operators will endeavor to prevent overloading of these lines as much as possible by enforcing the five-minute rule as far as is practical.

J. A. Hudson.

Columbia, Mo., July 8, 1914.

Since that date the company has been operating under the rule above set forth, which seems to have removed the cause of the complaint. Defendant company has the right to limit conversations over rural lines to a reasonable limit of time, and we see no objection to the limiting of conversations to 5 minutes

as provided in the above rule. Defendant has indicated its willingness to operate under the rule as above set forth.

We think that an order should be entered directing defendant to observe the conditions of the rule adopted on said July 8, 1914, until otherwise changed or abrogated by the Commission. An order will be entered accordingly. All concur.

John M. Atkinson, Chairman.

WISCONSIN RAILROAD COMMISSION.

IN RE NEW RICHMOND ROLLER MILLS COMPANY.

[W. P. 2.]

IN RE C. W. ARNQUIST ET AL.

[W. P. 5.]

Franchises — Incorporation — Wisconsin water power act.

A franchise was granted to a milling corporation under the Wisconsin water power act of 1913, to maintain a dam for generating power, so long as the power generated did not exceed 250 horse power, without requiring reincorporation of the company under the provisions of the act requiring special incorporation where more than 250 horse power is developed, where it did not appear that there could consistently be generated more than 250 horse power of useful energy, nor that there was 250 theoretical horse power available with sufficient continuity to put the site in question in the class of plants contemplated in the section of the act requiring special incorporation.

Dams — Conflicting petitions — Efficiency.

The fact that the power which would be furnished by a single high-head dam would exceed that which would be produced by two lower-head dams at the peak period of four hours per day does not show that it is of such superior efficiency as to warrant the destruction of a lower-head dam plant of another petitioner to make room for it, especially where the lower dam is operated in conjunction with another which gives it a somewhat increased peak capacity.

Franchises — Coupling up of water powers — Wisconsin act.

Where a milling company had acquired a franchise by legislative enactment to construct its first dam in excess of 250 horse power capacity on a certain river, and had constructed its second dam before the Wisconsin water power act of 1913 went into effect, it was not required to reincorporate under the water power act in order to become eligible for a franchise to maintain its second dam, even though the coupling up of the second dam with the first made a combined energy in excess of 250 horse power.

Dams — Operation of, without franchise — Public nuisance.

A dam may be operated without a franchise for the period of six months under the Wisconsin water power act, before it becomes a public nuisance.

Franchises — Incorporation under Wisconsin water power act.

Permission was granted to individuals to incorporate under the provisions of the Wisconsin water power act, and a franchise to the corporation was approved to construct and operate a dam for more than 250 horse power of energy at a proposed site on a certain river, or at any other site or location at which, when such dam was constructed and operated, there would be no impairment of the riparian rights under the franchise of any grantee held either by virtue of legislative enactment or under the so-called Wisconsin water power act.

[January 30, 1915.]

Two conflicting applications for franchises under the Wisconsin water power act of 1913; franchise granted to first applicant over the objection of second applicant; franchise denied to second applicant as applied for, but granted in a form not to conflict with first applicant.

The appearances are set out in the opinion.

By the **Commission**: There are two applications for franchise under the water power act of 1913 involved in this case: one by the New Richmond Roller Mills Company for a franchise to maintain and operate a dam already constructed by it on the Apple river in section 14, township 31 north, range 18 west, of St. Croix county, and the other by C. W. Arnquist, J. M. Arnquist, and Kate Tholien to construct, maintain, and operate a dam and hydraulic plant in the town of Star Prairie, St. Croix county, at a site about 1 mile below the dam of the first petitioners. As the situs of the now constructed dam of the first petitioner is included in the proposed situs and pondage of the other, it will, of course, be impossible to grant both petitions according to their original terms. Therefore, the objectors to the application of the New Richmond Roller Mills Company, the second applicants, become in turn applicants in the second case, to which the New Richmond Roller Mills Company appear as objector. As the same parties are interested in both applications, but in reversed positions in the two, the two cases were heard together in order to settle the conflicting claims.

The application of the New Richmond Roller Mills Company

to operate the dam in question, commonly known as the McClure dam, was made under the provisions of § 1596-60, subsec. 2 of the Statutes, which provides that franchises authorizing the construction, maintenance, and operation of dams on other power sites on which there cannot be developed more than 250 horse power of hydraulic or hydro-electric power may be granted to any person, firm, or corporation organized under the laws of Wisconsin. The applicants state that they do not believe that the Apple river is navigable for any purpose, but that they waive this question in making their application. After due publication of notice of such application, a hearing was held at the office of the Commission in Madison on December 18, 1913, at which there appeared the other applicants, C. W. Arnquist, J. M. Arnquist, and Kate Tholien, objecting to the grant of the application of the New Richmond Roller Mills Company, and at the same time filing a petition for a franchise to form a corporation for the purpose of constructing and operating a dam and hydro-electric power plant 1 mile below said McClure dam.

A second hearing was held at the city hall at New Richmond on May 28, 1914. The appearances for both hearings were W. F. McNally for the New Richmond Roller Mills Company, and N. O. Varnum for the objectors. Hon. W. S. Owen, Attorney General of Wisconsin, appeared on behalf of the state.

The reasons advanced by the objectors against granting the franchises prayed for to the petitioner were: (1) That the McClure dam was constructed without legislative authority and is thereby a public nuisance; (2) that the petitioner now operates another dam about $\frac{3}{4}$ mile above the one in question, known as the Huntington dam, which supplies the petitioner with power sufficient for its purposes; (3) that the said dam is not a safe or substantial structure; and (4) that its position and that of the pondage above it operates as an obstruction to navigation upon the Apple river.

It appears from the testimony that the New Richmond Roller Mills Company acquired the franchise to construct the Huntington dam on the Apple river through legislative enactment, and having constructed the McClure dam before the water-power law of 1913 went into effect, now desires to operate it in conjunction with the Huntington dam; to effect a "coupling up" according to

the terms of the statute. The petitioner's Huntington dam is not, however, further concerned in the present case.

The petitioner's McClure dam is about $\frac{3}{4}$ mile below the Huntington dam, has a head of 13 feet, and pondage of approximately 35 acres. It consists of a timber framework with a filling of rock, and according to testimony of those acquainted with it and the opinion of our engineers, it is sufficiently stable to withstand the pressure upon it, so the argument of the objectors as to its lack of stability will be dismissed without further consideration.

Two sites for location of their dam and power house are proposed by the Arnquists and Tholien in their counter petition. C. B. Stewart, a consulting engineer in their employ, filed a report in connection with their application, in which the two plans are discussed. The plan found in the Stewart report to be the most favorable, and hereinafter referred to as plan No. 1, is for the construction of a dam at Arnquist site "B," as indicated on the map, $\frac{3}{4}$ mile downstream from the McClure dam, at which there will be a headway of 22.9 feet and pondage of 210 acres. It is also tentatively considered in this connection to locate the power house some distance below the dam, on a body of water known as Heron Lake, and conducting the water from the pond to the power house by means of an artificial canal, by which an additional headway of 1.5 feet could be obtained, making a total of 24.4 feet, and a possible development of 600 horse power.

The 210 acres of pondage contemplated in this plan includes the 35 acres of pondage of the McClure dam site, and if constructed would, of course, operate to entirely destroy the latter. The petition of the Arnquists and Tholien would justify this procedure upon the arguments set forth in the "summary and conclusions" of the Stewart report, which asserts that a plant with 13 foot head and pondage of 35 acres, namely, the McClure plant, is not adapted to the service of furnishing variable power during 24 hours of the day, as there would thereby be a loss of power of from 5 per cent to 22 per cent, but states that a plant with a 22.9 foot or 24.4 foot head and pondage of 210 acres is so adapted, being capable of furnishing approximately 600 horse power normally and a peak load for a four-hour period of 1,600 horse power, with a loss of only about 0.8 per cent.

The second plan proposed, and hereinafter referred to as plan

No. 2, is for the location of a dam and power house at the possible site "A," farther downstream from site "B." This would make possible a head of 12.5 feet and a pondage of 240 acres extending to near the foot of the McClure dam, but this plan contemplates no disturbance of the pondage or power of the McClure plant; but it is argued by the counter petitioners, based on the "summary and conclusion" of the Stewart report, that this would not be an efficient arrangement as with an average stream flow of 300 second feet a 22.9 foot head dam could furnish a peak load for a four-hour period of probably 1,600 horse power, while the combined peak loads of the 13 foot head dam, *i. e.*, the McClure dam and of the 12.3 foot dam, as contemplated in plan No. 2, would amount to only about 1,125 horse power. Another argument advanced by the counter petitioners in favor of plan No. 1 is the economy with relation to pondage. The total pondage of the two dams considered in plan No. 2, that of the McClure dam and of the dam at Arnquist site "A," is about 275 acres, while that of the 22.9 foot head dam as proposed in plan No. 1 would be only 210 acres. Thus, aside from the greater amount of power available with a single dam, there is a saving of some 65 acres in pondage, which, it is argued, means a saving of some \$2,000, and allows the land not thus taken up in pondage, to be used for other and more profitable purposes. No value is given by the counter petitioner to the 35 acres of pondage above the McClure dam for adjusting the pressure of the streams to the variable demands for power, although its area is one sixth of that contemplated in the first Arnquist plan.

As either of the plans contemplated by the Arnquists and Tholien would result in the development of more than 250 horse power, their petition to be granted a franchise to form a corporation under § 1596-60, subsec. 1, of the water power act, is properly made. The propriety of the petition of the New Richmond Roller Mills Company under § 1597-60, subsec. 2. has been the subject of some discussion, and should be here considered. The charter of the New Richmond Roller Mills Company states that it is incorporated for the purpose of manufacturing and selling flour, feed, and mill products, buying and selling grain, etc., and as it was not, of course, organized as a corporation under the water power act, the principal point involved in considering the

validity of its petition for a franchise under § 1596-60, subsec. 2, is that as to the amount of power which can be developed at the ordinary stage of water at the McClure dam. If more than 250 horse power can be developed under the foregoing conditions, a franchise under § 1596-60, subsec. 2, could not be granted to the New Richmond Roller Mills Company under its present organization and charter. This question is therefore of vital importance in this proceeding.

There are various factors involved in the determination of the amount of power available at any dam site, the chief of which are: (1) Fall or head available; (2) quantity of water flowing at ordinary stage of the river, *i. e.*, feet per second flowage; (3) possible efficiency of the mechanical and electrical equipment.

The amount of water flowing in the Apple river varies widely from month to month and year to year, rendering the "ordinary stage" as prescribed by statute very difficult of exact determination. In order to make such determination, reliable measurements of the flow taken at short intervals throughout a long period, and at the point in question, must be available, and no record of such measurements is obtainable.

There is available, however, and the engineers of the Commission have made use of, some valuable data of this nature taken at the hydro-electric plant of the St. Croix Power Company, which is located about 3 miles above the mouth of the river or 10 miles below the McClure dam. It is the opinion of the Commission's engineers that the flow at the McClure dam can be approximated with sufficient accuracy for the purposes of this case, by applying a factor determined from the drainage areas above the two sites. The drainage area above the McClure dam has been estimated at about 90 per cent of that above the St. Croix Power Company's plant, at which place the flow of the stream has been measured daily, and even hourly, for at least part of the time for several years.

The monthly and yearly averages of the flow of the stream as measured at the St. Croix plant near Somerset are shown in the following table, the figures having been furnished by the St. Paul Gaslight Company, and the latest figures having been verified by the Commission's engineers:

TABLE I.
Average Flow of Apple River, Wisconsin.
Cubic Feet per Second at St. Croix Power Company's Plant near Somerset.

	1901	1902	1903	1904	1905	1906	1907	1908	1909	1910	1911	1912	1913	1914
January	340	233	259	392	328	348	354	262	251	313	201	215	208	216
February	330	307	240	314	319	327	350	277	252	285	224	208	202	200
March	448	370	599	406	406	367	706	373	301	409	245	240	344	240
April	837	430	554	729	443	881	657	478	503	279	285	450	590	314
May	510	480	860	633	420	1000	418	688	530	233	240	615	382	314
June	380	360	468	593	1030	732	382	784	460	202	224	335	264	376
July	400	480	482	450	532	452	520	435	246	150	165	238	237	328
August	250	340	366	316	424	506	322	255	285	151	178	248	245	226
September	270	233	674	508	545	501	416	226	313	166	226	300	233	306
October	330	307	623	550	490	463	343	291	317	211	472	266	247	
November	330	360	360	459	425	536	312	261	448	197	260	230	242	
December	230	276	317	321	392	436	272	257	381	187	327	230	232	
Average	388	348	483	473	479	546	421	352	358	232	254	298	285	

From the relative drainage areas above the two points mentioned, it must be assumed that for every cubic foot of water flowing past the St. Croix Power Company's plant there is 0.9 cu. ft. flowing at the McClure dam where it has a fall of 13 feet. This 0.9 cubic feet produces, therefore, theoretically 1.33 horse power. On account of the losses incident to the operation of the water wheels and generators, the power actually available at the station switchboard per cubic foot of water flowing per second at the St. Croix dam will be 1.33 horse power multiplied by the combined efficiency of the water wheels and generators. This efficiency factor is not a very definite or certain one, but the results obtained elsewhere seem to fall generally within the limits of 65 per cent to 80 per cent. In his report on the overall efficiency of the proposed Arnquist site, Mr. Stewart estimates it to be 72.25 per cent. Using the same efficiency factor as assumed by Mr. Stewart, we find that for each cubic foot per second flowing at the St. Croix dam there is 0.96 horse power of actually usable energy developed at the McClure dam. This, of course, does not apply to abnormally large flows, nor to any beyond the quantity of water which may be available with sufficient continuity to render justifiable any provision for its utilization.

During the last five years (sixty months) for which we have flow measurements at the St. Croix dam, it is found from the foregoing table that there were thirty-five months, or 58.3 per cent of the time, in which the average monthly flow was less than 250 cubic feet per second, limiting the actual horse power available at the McClure dam to 240 horse power for the same proportion of the five-year period. During several of these same

thirty-five months, less than 200 horse power of useful energy was available.

In view of the foregoing facts it does not appear that there can consistently be generated at the McClure plant more than 250 horse power of useful energy; nor is it clear that there is 250 theoretical horse power available with sufficient continuity to put the McClure site in the class of plants contemplated in subsec. 1 of § 1596-60 of the water power act. The New Richmond Roller Mills Company is therefore eligible under the provisions of its present charter to apply for a franchise under the foregoing section.

The arguments of the counter petitioners as to the greater economy in both cost of operation of and amount of power obtainable from 22.9 or 24.4 ft. head dam, instead of two dams with headways of 12.3 ft. and 13 ft. respectively, should be here considered.

Irrespective of pondage the total horse power furnished by the two small head dams is greater than that of the one large head. The dam at Arnquist site B with the power house on Lake Heron, giving a head of 24.4 ft., will furnish 600 horse power with a stream flow of 300 cubic feet per second, according to the Stewart report, while the two 12.3 ft. and 13 ft. head dams would together furnish 622 horse power with the same flowage.

Thus the power furnished by the single high head dam exceeds that of the two lower head dams only at the peak, which is when a draught is made upon the pondage. As the peak period is only four hours per day, we are unable to recognize the claim of superior efficiency of the higher head dam to the extent of destroying the petitioners' McClure plant.

Again, as the McClure and Huntington plants are to be operated in conjunction with each other, as they are drawn upon for the same purpose, they are very largely drawing for the same peak load, and as a result the pondage of the latter supplements that of the former. The McClure plant, then, has the advantage of the pondage area of the Huntington plant when the two are operated together, which makes possible a higher peak power at lower plant.

Thus, the peak superiority of the single high head plant does not exceed that of the two low head plants as much as might be

thought, and the counter petitioners do not, in their estimates of the relative efficiency of the plants, allow for the increased peak capacity of the McClure plant due to the co-operation of it with the other plant.

As before stated, it is the desire of the New Richmond Roller Mills Company to couple up its Huntington and McClure dams in order to use the combined energy of the two in generating power for the city of New Richmond and for other purposes.

The counter petitioners argue that in order to do this the New Richmond Roller Mills Company must incorporate under the water power act in order to be eligible to apply for such franchise. They base their argument upon the provisions of subsec. 6 of § 1596-69, which reads as follows: "If the grantee of a franchise under this section, other than a municipality, shall desire to increase the development capacity of any dam owned and operated by it beyond 250 hydraulic horse power, or if any such grantee shall desire to couple up any developed water power with any other water power or water powers, developed or undeveloped, thereby completing a development of more than 250 horse power, application shall be made for a charter and franchise as provided in § 1596-62."

The provisions of this section do not apply to the New Richmond Roller Mills Company, for neither is it a "grantee" within the meaning of the term as used throughout the water power act, nor is the Huntington dam included within the terms of the section quoted. The "coupling up" referred to applies to dams of less than 250 horse power and to dams for which a franchise has been granted under the water power act, and the Huntington dam is neither of these, and as no franchise has as yet been granted to the petitioner to operate the McClure dam, it is in no sense a grantee.

It is not obligatory, therefore, that the petitioner organize under the provisions of § 1596-62 of the Statutes in order to become eligible for a franchise under the water power act.

It is contended by the counter petitioners that the petitioners' McClure dam is an illegal structure, being constructed and operated with no authority from either the legislature or the Commission. Sec. 1596-59 of the water power act allows a period of six months after which a dam operated without authority shall be-

come a public nuisance. At the dam in question was finished a few days prior to the date at which the water power act went into effect, and even if its construction had not been completed until after the act went into effect, the petitioner could have operated it without a franchise for the period of six months allowed by statute, so that the dam cannot be said to be in any sense a nuisance under the water power act.

After full consideration of the locus and capacity of the McClure dam, and also of the dam sites proposed by the counter petitioners, and in further consideration of all of the equities of the case, we find no reason why the petitioner should not be granted a franchise to operate the McClure dam under subsec. 2 of § 1596-60 of the water power act as long as the power generated at this plant does not exceed 250 horse power. There seems also under the statute nothing to prevent the joint operation of the two dams, as the Huntington dam, which was a legal structure before the passage of chap. 755, does not come within the purview of the water power act, and the Commission has, therefore, no jurisdiction over it.

It appears from the testimony that there are at present no fishways or logways at the McClure dam. There is, perhaps, no need for a chute for the passage of logs, as logs have not been floated down the Apple river for many years, and there is little likelihood of their being sent down the river in any appreciable quantities in the future. Fishways, however, are a necessity, and the petitioner must construct proper chutes or slides for the passage of fish past its dam.

With regard to the Arnquist-Tholien petition, the Commission will grant to the counter petitioners the authority to organize and incorporate under chap. 755, and will also grant them a franchise to construct and operate a dam under subsec. 1 of § 1596-60, with the condition that such dam and pondage shall in no manner interfere with the New Richmond Roller Mills Company's McClure plant.

Under the foregoing stipulations, the counter petitioners' proposed plan No. 1, providing for a dam at site B with a 22.9 foot head or the 24.4 foot head with the power house on Lake Heron, must be dismissed from consideration. As the 210 acres of pondage considered in this plan includes the 35 acres of pondage con-

nected with the McClure dam, the result would be a complete "drowning out" of that plant, and an impairment of the rights of the petitioner which cannot be countenanced by the Commission.

A 9.8 foot head at site B will cause a back water up to the foot of the McClure dam, and as this will not interfere with the flowage or fall at that plant, the Commission is ready to grant a franchise to the counter petitioners for a dam of 9.8 foot headway at site B. It is also willing to grant a franchise for a dam with a head of 12.3 feet at site A, as proposed in the Arnquist plan No. 2, as there is, under this plan, no interference with the flowage or fall at the McClure dam.

Any other location at which the counter petitioners wish to construct a dam, the operation of which will not impair the rights of the petitioners and which complies with the requirements in other respects, will be approved by the Commission.

It is therefore ordered: That the New Richmond Roller Mills Company be granted a franchise under subsec. 2 of § 1596-60 of the Statutes to operate a dam and plant at the so-called McClure site on the Apple river, on the north half of the northwest quarter of section 14 in township 31 north in the town of Star Prairie, St. Croix county, Wisconsin.

That the New Richmond Roller Mills Company construct a proper and adequate chute or way for the passage of fish past the McClure dam. Sixty days are considered a reasonable time in which to comply with this part of the order.

That C. W. Arnquist, J. M. Arnquist, and Kate Tholien be granted permission to incorporate under the provisions of chap. 755 of the Statutes; and, further, that the corporation so organized be granted a franchise to construct and operate a dam for the generation of more than 250 horse power of energy at the proposed site A, as hereinbefore mentioned and described and indicated on the accompanying map, or at any other site or location on the Apple river at which, when such dam is constructed and operated, there shall be no impairment of the riparian rights under franchise of the New Richmond Roller Mills Company or any other grantee, either by virtue of legislative enactment or under chap. 755 of the Statutes.

That if the counter petitioners construct a dam, complying with

the specifications mentioned, such shall be a stable structure, and shall be equipped with adequate ways or chutes for the passage of fish.

That any and all grants in this order shall be subject to all of the restrictions and provisions applicable under chap. 755 of the Statutes.

Railroad Commission of Wisconsin, by John H. Roemer, Halford Erickson, David Harlowe, Commissioners.

WISCONSIN RAILROAD COMMISSION.

IN RE REGULATION AND CONTROL OF LEVEL AND FLOW OF WATER IN ROCK RIVER.

Dams — Opening for flow of water.

A corporation was ordered to construct in its dam, incapable of carrying off flood waters without materially raising the river to the damage of property owners, a single gate sufficient for the escape of such waters, and to open the same when the river attained a certain height.

[January 30, 1915.]

APPLICATION for the modification of the construction of a dam to permit the escape of flood waters; granted.

The appearances are set out in the opinion.

By the **Commission**: William T. Kliefoth and three other citizens and taxpayers of the city of Mayville complain that they are directly interested and damaged by the flow and level of water between the upper and lower dams within the city of Mayville; that it is necessary, to protect the public right and for the public welfare and safety, that the level and flow of the water between said dams within said city be regulated, and a maximum and minimum level of water be maintained between said dams within said city; that the said lower dam which is used and operated by the Northwestern Iron Company was erected by said company in the year 1905 at a point immediately east of the bridge crossing Rock river on North Main street in said city, and crosses said river from a southwesterly to a northeasterly direction; that for more than thirty years prior to said 1905 no dam of any kind was in existence at or near said point; that the present

lower dam, erected in the year 1905, was at first erected with a fishway and open space for surplus waters to flow through, but that for more than three years no opening of any kind is or has been in said dam; that said lower dam spans said river at said point for a distance of about 95 feet and has a head of about 9 feet; that under and pursuant to chapter 29, Private and Local Laws of 1854, the said Northwestern Iron Company obtained its power to construct a dam at said time, but that by long discontinuance and disuse the said Northwestern Iron Company has forfeited its right; that since said time certain flowage rights have been inserted in all deeds of premises sold along said river, but that no such flowage right exists further up on said river than lot 7 block 13 of the original plat of the city of Mayville; that said terminal point of the flowage right reserved in deeds as aforesaid is at least 700 feet from the dam referred to herein as the upper dam; that the only other flowage rights of said Northwestern Iron Company permitted by said lower dam are contained in a certain lease dated May 3, 1848, in and by which it is expressly provided that "said dam so to be erected by said party of the second part, his executors, administrators, and assigns, on the Rock river on any portion of said sections 14 and 13, shall not be raised so as to cause the water to flow or back up near to the flour or grist mill already erected by said party of the first part on the same stream, more than 15 rods from or below said mill, so as not to hinder or molest by flooding the operations of said mill;" that it was further provided in said lease that the parties of the second part were to so "erect their dam with waste gates or flashboards as to be able to draw off any surplus water in time of flood or freshets, with as little delay as the nature of the case will permit, and that they will not hinder or molest, by flooding, any operations for manufacturing purposes," etc.; that the mill was at that time located at least 500 feet below the present location of what is termed herein as the upper dam; that in the year 1908, after the completion of the cement dam herein referred to and known as the lower dam, the said iron company purchased from the F. Paustian Milling Company a certain mill property and with it that certain dam described herein as the upper dam; that said upper dam spans said river for a distance of 150 feet, including a mill race, and crosses

said river from west to east at a point which is about the west terminus of Horicon street in said city; that the construction of said dam is of wood, and is such that in case of heavy spring freshets the same is apt to break and cause heavy floods along said river within said city; that the distance along said river between the upper and lower dams is about 1 mile; that at all times during the year the level of the water between said two dams is such that the lower dam backs up the water into the upper dam contrary to the flowage right hereinbefore referred to; that by reason of the foregoing and of the height of the lower dam large areas of land belonging to the petitioners and other property owners similarly situated are overflowed, contrary to the flowage rights of said iron company; that by reason of the premises the water raised at least 2 feet higher than it should under the flowage rights permitted as hereinbefore mentioned; that by reason of the height of said dam and the failure of said iron company to provide said lower dam with proper spillway or gateway, and, further, by reason of the construction of the upper dam, during spring freshets the property along said river has been greatly damaged, and with present conditions existing and continuing to exist the owners of said property have good reason to believe that irreparable injury will result to them; that during the spring of 1913 all the basements along said stream became filled with water, and many business houses suffered damage; that a footbridge built across said stream by the said city was torn away; that by reason of the absence of a spillway on the lower dam the water backed up over the ice and created a very dangerous state of affairs; that repeated notices have been given to the iron company to remedy the situation, but that said company has neglected and refused to take any steps to remedy the situation; wherefore petitioners pray that the flow of water between said upper and lower dams be investigated, regulated, and controlled; that a maximum and minimum water level be established and maintained; that the rights of said iron company and the petitioners herein be determined; that the said lower dam be lowered and provided with spillway or floodgates capable of permitting the passage through or over the same of freshets and floods during all seasons of the year, and for such other and further relief in the premises as may be just and proper.

The matter came on for hearing on the 15th day of October, 1914. The petitioners were represented by Emil H. Naber of Naber & Wheeler; and the respondent Northwestern Iron Company by Elias H. Bottom, of Flanders, Bottom, Fawsett, & Bottom.

The evidence in this case shows that in the spring of 1913 much damage was done to property in the city of Mayville because of water backing up between the lower and upper dams. An ice gorge seems to have formed and prevented the water from flowing over the dam. A recurrence of such event is likely unless a remedy is provided for disposing of the surplus water in case of flood.

The engineer of the Commission was required to make an investigation of the situation. His report, which was submitted upon the hearing, is as follows:

There are no flood gates in this dam, but a concrete spillway, 94 feet long, extends over the entire length of the dam between the retaining walls on either bank of the river. The distance from the top of the spillway to the top of the retaining walls is 3 feet. The height of this dam to the top of the spillway is 8 feet and 9 inches. The maximum discharge capacity of the dam, with water level with the top of the retaining walls, as computed from tables for discharge over weirs of various types, is 1,820 cubic feet per second, or about 2,065 cubic feet per second less than the maximum discharge capacity of the upper dam and plant.

The banks of the river between the upper and lower dam in some places are low and swampy, while the remainder slopes to the river at the rate of about 10 feet in 100 feet. The river bottom is rocky.

The flow or run-off of a stream depends upon several things, the most important of which are as follows, the first mentioned being the direct cause of run-off, while the remaining four are influences which affect the rate and manner in which this precipitation is carried away: (1) The amount and intensity of precipitation; (2) the character of soil and steepness of slopes; (3) the amount and distribution of the precipitation, over a period of days previous to the final rainfall which produces flood; (4) natural and artificial storage features in the drainage basin; (5) the amount

of snow on the ground which, in connection with certain temperatures and rainfall conditions on frozen ground, may produce flood.

Another fact which must be given consideration is that larger floods are possible on smaller drainage areas, because maximum rainfall conditions do not extend over large areas. On a watershed of 170 square miles a heavy rain is more apt to cover the entire area, while with a drainage area of 500 or 1,000 square miles, heavy rainfall usually covers only a part of the area, so that run-off conditions will be somewhat modified.

The Rock river above Mayville has a drainage area of about 170 square miles. This land is practically all under cultivation and free from timber. There are not many swamps on this portion of the Rock river watershed, and those which do exist there are not very extensive. Land in this vicinity is mostly high and rolling. The presence of extensive swamps and marshes, such as the Horicon marsh, plate 3, on the west fork of the Rock river, indicates natural storage reservoirs, while absence of swamps, such as on the east branch of the Rock river, indicates small natural storage to rainfall. The result is that, with conditions such as those existing above Mayville on the Rock river, there is a rapid run-off in freshet time or in time of precipitation which has lasted for from ten to fifteen days, and is terminated by a heavy rain. This produces flood.

The drainage area of the Wisconsin river between Tomahawk and Merrill is about 700 square miles. This is a very rapid drainage area. Floods of 40 cubic feet per second per square mile have existed at Merrill due to run-off from this area. Measurements of stream flow on the Spirit river at Spirit falls show that floods of 27.5 cubic feet per second per square mile have occurred. The drainage area of this river above the dam at Spirit falls is 96 square miles. This drainage area is a very rapid one. The banks are mostly steep and rocky. The topography of the watershed is steep, so that for even moderate rainfalls this river rises to a flood stage. The drainage area of this stream is somewhat smaller than that of the Rock river above Mayville, but there is not as much of the former watershed under cultivation as of the Rock river. On the Wisconsin river above Tomahawk, and especially above Rhinelander, flood conditions are somewhat different. The gradual slopes of the river, together with the many

inland lakes, swamps, and depressions which have their outlet to the river only by seepage through the ground, modify the flood peaks considerably. The Wisconsin river, in part, flows over pervious beds of sandstone, and a considerable amount of the water falling on its drainage area is undoubtedly lost through absorption by the underlying strata. These losses undoubtedly affect the flow of the stream to a considerable extent. The bed of the Rock river, on the other hand, is less pervious, and very little water is lost on account of absorption.

No records of rainfall on the watershed of the upper Rock river are available, but existing rainfall records at stations located at Appleton, Fond du Lac, Manitowoc, Oshkosh, Ripon, Baraboo, Lake Mills, Portage, and Watertown show that precipitation in the past has been a little heavier in this vicinity than on the upper Wisconsin. Although the precipitation at these various places does not affect the flow of the Rock river, they are indicative of the rainfall which does affect the flow on the Rock river watershed.

By making comparisons with the run-off conditions of various other rivers in Wisconsin with which the writer is personally acquainted, and after making a study of the rainfall and topographic conditions on the watershed of the Rock river above Mayville, the writer has concluded that it is reasonable to expect a run-off on the Rock river at Mayville of 20 cubic feet per second per square mile. This figure is considered by the writer as being a conservative estimate of the maximum run-off, and it is estimated that it is possible in extreme flood conditions to obtain a flood as high as 25 cubic feet per second per square mile. With a run-off of 20 second feet per square mile, the discharge in the river at Mayville would amount to 3,400 cubic feet per second. With a run-off of 25 second feet per square mile, the discharge at Mayville would be 4,250 second feet, or about 365 second feet in excess of the discharge capacity of the upper dam with all stop-planking removed from the gates. With this last condition the flood peak would perhaps last for only a few hours.

A survey of the Rock river in Mayville was made on March 10, 1914. On the date of this survey the water on the spillway of the lower dam was 0.2 feet deep. The map of this survey is attached. It shows the shore lines of the river with water 0.2 feet

deep on the spillway of the lower dam, and the topography along both sides of the river banks between the upper and lower dams, and the land which is flooded for each foot rise of water above the spillway of the lower dam. The flooded lands for each foot of rise are indicated by contours, having a 1-foot interval. A study of hydrographs of various rivers shows that in time of flood the river rises from its low stage to the flood stage and then drops back again to the low stage. The time required for the water to rise from its low stage to the peak of flood and then down again to normal is controlled by so many factors that the actual time for flood duration cannot be computed for special places, but can only be obtained by actual experiment.

Where the drainage area is large, the length of time for flood duration is usually greater than where the drainage area is small. The flood peak is highest in the vicinity of heavy rain, and is gradually flattened out as it is carried down stream.

An attached blue print, plate 4, shows a typical gage height curve. This curve shows the flood periods, their general length of duration, and general fluctuation of gage height, on Kinzua creek at Dewdrop, Pennsylvania. The drainage area of this stream above Dewdrop is 162 square miles. According to the report of the Pennsylvania Flood Commission in 1911, the greatest range in gage height was 11 feet. This stream has a steep drainage area, topography being heavy, so that floods rise to a greater height than could be expected on the Rock river above Mayville, but they do not last as long on Kinzua creek as they do on the Rock river, so that this hydrograph can only be used comparatively to show length of flood duration on the Rock river.

The upper dam of the Northwestern Iron Company in the village of Mayville, with water level with the tops of dikes and all stop-planking removed from the gateways, can discharge 3,385 cubic feet per second, or about 23 cubic feet per second per square mile, so that, should a flood of 20 cubic feet per second per square mile occur, the upper dam would discharge the water as fast as it carried from the various creeks and streams tributary to the Rock river above that point; the lower dam would accordingly have to pass the same amount of water over it in order to prevent a washout below.

The following table gives the discharge capacity for the lower dam for various depths of water on the spillway:

Depth on Spillway in feet	Discharge capacity, Cu. Ft. per Sec.	Discharge Capacity, Cu. Ft. per Sec. per Sq. Mi.
0.2	31.	0.18
1.0	320.	1.8
2.0	890.	5.2
3.0	1820.	10.7
4.0	2524.	14.8

From the above table it can be seen that when the water is 0.2 of a foot deep on the spillway of the lower dam the flow of the river is very close to 31 second feet or 0.18 of a second foot per square mile. It is estimated that, should the flow be increased to 320 cubic feet per second, the water would rise to a depth of 1 foot on the spillway. This would cause the water to rise 1 foot between the two dams, and flood all land shown below the 101 ft. contour on the attached blue print. A depth of 2, 3, and 4 feet on the lower dam would cause a rise of 2, 3, and 4 feet on the pond between the two dams. If ice jams were to occur above the dam, the water above the jam would rise without raising the head of water at the lower dam.

The following table gives, in minutes, the time required for water to rise from the top of the spillway of the lower dam to various contours, with a flow of 10 and 20 second feet per square mile, assuming the river to be free from ice jams between the dams:

Assumed flood flow in:

Contour	Sec. Ft.	Cu. Ft. per Sec. Per Sq. Mile	Time in Minutes
101	1700	10	12
	3400	20	5
102	1700	10	32
	3400	20	13
103	1700	10	—
	3400	20	25
104	1700	10	—
	3400	20	45

From the foregoing table it can be seen that, should a flood of 10 second feet occur, the back water from the lower dam would flood considerable land between the two dams. Such a flood may occur every year. Elevations were taken at various points to determine the elevation of the high water of last spring. This

elevation was 104.3 or about 0.3 of a foot above the 104 foot contour. With a flood flow of 20 cubic feet per second per square mile the water would rise to elevation 104.3 in about an hour. If ice jams were to form between the two dams the water would rise to this height in a shorter time. According to Mr. Means, of the Northwestern Iron Company, this is what occurred during the spring of 1913. As already stated, these floods do not come up immediately, but require considerable time, depending upon the condition of the ground and intensity of the rain.

On the date of this investigation, March 10th, the water in the spillway of the lower dam was 0.2 of a foot deep. This dam is narrower than the river at any point between the two dams. Soundings were taken at various places along the river bottom by chopping holes through the ice and measuring from the surface of the water to the bottom of the river. In every case the river was found to be over $2\frac{1}{2}$ feet deep. These measurements were taken near the middle of the stream. The smallest cross-section area of water was on the spillway where the length of the section was only 94 feet long and 0.2 of a foot deep. At all other places the cross-section area was much greater; in fact, the river was much wider at every other place.

Levels were run on the ice, beginning with the top of the spillway of the lower dam, the elevation of which was taken as 100 feet. The elevation of the water about 10 feet up stream from the lower dam was 100.3 feet. The surface of the water from this point to the upper dam was found to be practically level, so that if the depth of water on spillway of the lower dam were increased by 0.2 of a foot, the water between the two dams and just below the upper dam would be raised a little more than 0.2 of a foot, and further, since the cross-section area of the river between the two dams is so much greater than the cross-section area of the water on the lower dam when the water on the spillway is only 0.2 of a foot deep, if the head of water is lowered a foot the depth of water between the two dams will be decreased a foot.

According to Mr. Kliefoth and Mr. Naber, of Mayville, rights of the Northwestern Iron Company to back water extend to a point 15 rods north of a point where an old gristmill at one time existed. This gristmill was just north of a gristmill now existing, and marked "Power House" on the attached blue print.

The water at this point near the middle of the stream varies in depth from 3 to $3\frac{1}{2}$ feet, so that, if the head at the dam were lowered a foot, the water at the site of the old gristmill would be lowered a foot, indicating that backwater at that place was at least a foot deep.

From observation and study of the situation we are satisfied that the lower dam of the Northwestern Iron Company is not capable of carrying out flood water without materially raising the water over the top of the spillway. According to the testimony given, the water at one time rose to a depth of 33 inches on the top of the spillway of the lower dam, or within 3 inches from the top of the concrete retaining walls on either end of the dam. For a rise of 33 inches at the dam there would be a rise of almost 36 inches in the neighborhood of Mr. Kliefoth's house. With a rise of 33 inches at the dam it would be necessary for Mr. Kliefoth and several other property owners on the east side of the river to use a boat to pass in and out of various buildings on their lands. A rise of 16 inches or 2 feet at the dam would cause considerable land up-stream to be flooded.

When the gates at the upper dam are opened, the water between the two dams begins to rise, as the gates at the upper dam have a greater capacity than the spillway of the lower dam, and the water on the spillway must rise to a considerable depth before it can discharge any great amount of water. It is a mistake to think that because the spillway begins to act as soon as the water rises to such a height that it will flow over it, that the water will stay at that level. We believe that the lower dam should be equipped, according to the best engineering practice, with a gate or gates that can be opened to a point 5 feet below the top of the present spillway, and for a total clear opening for water passage of 27 feet in length. It is considered advisable to have only one gate, with a clear opening 27 feet long, rather than several gates of shorter length. A single long gate will make it easier to dispose of ice flow, for ice is less apt to jam in the gates. The bottom of the river on the upstream side of this gate should be dredged out to a level at least as low as the bottom of the new gate which is to be constructed. The objection raised by the Northwestern Iron Company that there might be a possibility of

not being able to close the gate after it has been opened is negligible, as the gate should be so constructed that it can be closed. A high-water mark should be established, and when the water reaches this height the gates should be opened immediately. After giving the matter careful consideration, we are of the opinion that a limit of 6 inches above the top of the present spillway is the point which should be the highest stage at which the water should be held in flood time, and that the gates should be opened when this elevation is reached. This, we believe, allows sufficient variation between the top of the spillway and the high-water mark, so that the dam operators will not be obliged to open and close the gates very frequently. The present height of the dam is not dangerous, and we believe that the crest of the present spillway should remain the same as it is.

Now therefore, it is ordered that the Northwestern Iron Company be and the same is hereby ordered to construct one gate in said lower dam with a clear opening 27 feet in length, and that the bottom of the river on the up-stream side of such gate shall be dredged out to a level at least as low as the bottom of the gate to be constructed.

It is further ordered that the maximum height of the water permitted by said dam shall not exceed 6 inches above the top of the present spillway, and that when the water shall reach such height the said Northwestern Iron Company shall open said gate to allow said water to escape.

July 1, 1915, is deemed a reasonable time within which to complete the work herein ordered.

Railroad Commission of Wisconsin, by John H. Roemer, Hal-ford Erickson, David Harlowe, Commissioners.

WISCONSIN RAILROAD COMMISSION.

JOHN P. SCHMITT ET AL.

v.

CHICAGO & NORTHWESTERN RAILWAY COMPANY.

Service — Railroads — Adequacy — Existing trains.

The Commission refused to require a railroad company to operate an additional passenger train daily between certain points, although

the existing service was poor as compared with more densely populated communities, where it appeared that the additional service would cost \$49,000 per year, and that the total ticket revenue for the area of service was only \$52,124.73 and the cash fares collected amounted only to \$5,351.10.

[January 30, 1915.]

PROCEEDING to compel railroad company to operate additional passenger train; petition dismissed.

The appearances are set out in the opinion.

By the **Commission**: The petitions herein are signed by a large number of residents of Townsend, Wabeno, Breed, Soper-ton, Logan, and Carter, and ask that the Chicago & Northwestern Railway Company be required to operate an additional passenger train in each direction daily between Green Bay and Laona.

The respondent in its answer alleges in substance that the existing train service between Green Bay and Laona is adequate, and that the traffic does not warrant the operation of an additional train. The dismissal of the complaint is therefore asked.

Hearings were held at Wabeno on May 23, 1914, and October 23, 1914. Jos. T. Sims appeared for the petitioners, J. M. Parmentier for the Green Bay Commercial Club on behalf of the petitioners; and E. M. Smart, C. A. Vilas, and E. E. Nash for the respondent.

The existing passenger-train service on the line between Green Bay and Laona consists of a train north bound, No. 117, daily except Sunday, leaving Green Bay at 10:15 A. M. and arriving in Laona at 1:50 P. M., a Sunday train north bound leaving Green Bay at 7 A. M. and arriving at Laona at 10:20 A. M., and a daily train south bound, No. 112, leaving Laona at 3:38 P. M. and arriving at Green Bay at 7:35 P. M. In addition to the passenger trains, a north-bound freight train leaving Gillett at 8 A. M. and a south-bound freight train leaving Saunders at 7:35 A. M., carry passengers between Gillett and Saunders. These freight trains were said to be generally late.

Witnesses complained that under the existing arrangements patrons of the respondent at stations from Gillett to Laona are inconvenienced in making trips to Green Bay for the transaction of business. They are obliged to start in the afternoon, arriving

after stores and offices are closed. They can return the following morning unless their business is of such a nature that it cannot be completed before 10:15 A. M., in which case they are compelled to spend two nights in Green Bay and return the third day. They expressed the opinion that the traffic to Green Bay would materially increase if more convenient train service were established. Patrons of this line are also unable to travel to Laona and points north and return the same day, having a sufficient time for the transaction of business. When the passenger trains are on time only 1 hour and 48 minutes elapse between the arrival of one and the departure of the other, and witnesses stated that they occasionally meet at Laona. A commercial traveler representing the Green Bay Council of the United Commercial Travelers of America stated that under the existing schedule it is extremely difficult for traveling men to canvass this district, and estimated that if more favorable train service were established the number of traveling men visiting the territory would be doubled. Witnesses asserted that there would be considerable travel to and from schools in Wabeno and Green Bay, and that more widespread social intercourse would give rise to additional passenger traffic. The territory served by the branch line in question was described as being in the process of industrial transition. Formerly the products were almost entirely from the forests, but now a large number of farms have been cleared or partially cleared, and the agricultural products are considerable. However, forest products still predominate in the business of the branch line. The population of the interested villages was estimated by witnesses as follows:

Gillett	610
Suring	575
Breed	100
Mountain	200
Lakewood	100
Townsend	250
Carter	400
Wabeno	775
Padus	50
Laona	350
Total population	3,410

In addition to the above the surrounding settlement was said to be considerable. Data from the United States census of 1910 and the state census of 1905 as given in the 1913 Blue Book, show

the population of the various townships through which this branch line passes as follows:

Town	Population 1905	Population 1910
Gillett, Oconto Co.	1,121	1,300
Maple Valley, Oconto Co.	982	1,163
Howe, " "	973	965
Breed, " "	303	327
Armstrong " "	614	623
Wheeler, " "	142	215
Wabeno, Forest Co.	1,676	1,877
Laona, " "	1,008	1,178
Total	6,819	7,648

Respondent's division superintendent testified that the distance from Green Bay to Laona is 87.7 miles, and that under the operating agreement with its employees, two crews would be required to operate the service prayed. He said that the run from Green Bay to Carter or Townsend and return could be made by a single crew. The assistant general superintendent stated that the average cost of operating a passenger train is \$.90 per mile, but that the cost of operating a light train on this division would be somewhat less than the average. On the basis of the average cost, the new service prayed for would, according to his estimate, involve an expense of \$159 per day or approximately \$49,000 per year. Both officials expressed the opinion that traffic conditions do not warrant any additional service.

Respondent introduced a statement of ticket sales from stations between Green Bay and Saunders for the year ending March 31, 1914, which shows a total of 78,121 tickets and a revenue of \$52,124.73. It also submitted a statement showing the cash fares collected on trains out of each station between Green Bay and Laona during the same period, the total being \$5,351.10 received from 15,951 passengers. Data were also offered showing the number of passengers boarding and leaving trains at each station between Green Bay and Iron River from May 16, 1914, to May 21, 1914, inclusive.

From a careful examination of the testimony and after investigation we are of the opinion that the train service rendered by the respondent between Green Bay and Laona cannot be classed as inadequate. As compared with more densely populated communities, the service is poor and the petitioners are

subjected to considerable inconvenience. With the further development of the country some additional service will probably be warranted, but we do not feel justified at the present time in ordering the respondent to operate a new train in each direction in this territory at a considerable loss.

It is therefore ordered that the petitions herein be and the same are hereby dismissed.

Railroad Commission of Wisconsin, by David Harlowe, John H. Roemer, Halford Erickson, Commissioners.

WISCONSIN RAILROAD COMMISSION.

CITY OF NEW RICHMOND

v.

MINNEAPOLIS, ST. PAUL, & SAULT STE. MARIE
RAILWAY COMPANY.

Railroads — Service — Location of station.

The choice of the actual site for a railroad station is properly a function of the management of the railway company, and should not be interfered with unless it is established that adequate service or the safety of the public is endangered.

Railroads — Inadequacy — Station replacement.

The replacement of a railroad station should be given prior consideration over other station expenditures, where the company admits that such station has long been inadequate.

Railroads — Station replacement — Expense.

A railroad company was ordered to construct within a year, and to maintain, an adequate passenger station to replace one, admitted by the company to have long been inadequate, where it appeared that the financial condition of the company did not warrant an expenditure therefor at the time of the order.

[January 25, 1915.]

PROCEEDING to compel the erection of a new passenger station to replace one admitted to have long been inadequate; company ordered to erect modern station within a year.

The appearances are set out in the opinion.

By the **Commission**: The petition alleges in substance that the passenger station maintained by the Minneapolis, St. Paul, & Sault Ste. Marie Railway Company in the city of New Rich-

mond is unclean, unsanitary, poorly lighted, and inadequate for the comfort and accommodation of the traveling public. The Commission is therefore asked to require the respondent to construct and maintain an adequate passenger station at the site of its existing depot in the city of New Richmond.

The answer of the respondent admits that its passenger station is inadequate, but alleges that the earnings and financial condition of the Chicago division do not now and have not for some time past warranted the expenditure necessary for a new station. It therefore asks that the complaint be dismissed or held in abeyance until the present financial conditions materially improve.

Hearings were held at New Richmond on October 15, 1914, and November 13, 1914. W. T. Doar appeared for the petitioner; and A. H. Bright and Kenneth Taylor for the respondent.

Inasmuch as the respondent admits the inadequacy of its existing station facilities, it is unnecessary to comment upon the testimony tending to show such a condition.

The greater part of the testimony related to the advantages or disadvantages of two specific locations for the new station. The city contends that the existing site is more convenient for the city and adequate for railway purposes. The respondent prefers a location east and south of the Willow river at Green street, which it contends would in the long run be more advantageous for the city than the existing site, and which would make it possible to materially improve the conditions of railway operation. The city objects to this site primarily because its choice would probably result in a demand for an additional bridge over the Willow river, and certain other improvements which would involve the city in considerable expense. Patrons who live north of the existing station would be obliged to travel, in reaching the Green street site, an additional distance of about 3,200 feet, which is only about 800 feet farther than they are now obliged to travel to reach the station of the Chicago, St. Paul, Minneapolis, & Omaha Railway Company, which is in the southern section of the city about $\frac{1}{2}$ mile from respondent's station. The distance traveled by patrons living west of Main street and south of the Willow river would likewise be increased by about 800 feet over the route to the existing site. For persons living east of Green street the proposed location would be nearer than the present station. Al-

though the existing site would probably be more convenient than the Green street location for a large number of citizens, we are not convinced that the choice of the latter would render the service of the respondent inadequate.

The choice of the actual site for a station is properly a function of the management of the railway company, and should not be interfered with unless it is established that adequate service or the safety of the public is endangered. This is in substance the position taken in *Rhineland v. Minneapolis, St. P. & S. Ste. M. R. Co.* 8 Wis. R. C. R. 719, the following language being used in page 726: "It seems, therefore, that the initial question to be here determined is whether the new building will furnish reasonably adequate facilities for passengers at Rhineland. Unless such facilities can be condemned as not reasonably adequate, a change of location could not be effected, for the power to command new or additional service or facilities rests upon the inadequacy or inefficiency of the existing service or facilities."

Our order herein will therefore not attempt to specify the location of the new station.

The annual report of the respondent for the year ending June 30, 1914, was introduced in support of the allegation that the financial condition and earnings of the Chicago division do not warrant the expenditure necessary for the erection of a suitable station at the present time. Counsel suggested that within two or three years the financial condition would probably improve so as to permit this expense, and that in the meantime the company is willing to make temporary improvements. We recognize that the respondent should not be unnecessarily burdened in its present financial condition, but it does not appear reasonable to require the city of New Richmond to wait for the length of time named by counsel. The advisability of making temporary repairs on the existing station is questionable, and we believe that the people of New Richmond would prefer to wait an additional year for a new station rather than to have the existing station repaired. Inasmuch as respondent admits that the station has long been inadequate, its replacement should be given prior consideration over other station expenditures. Under such circumstances, we regard one year as a reasonable time for its erection.

It is therefore ordered that the respondent, the Minneapolis, P.U.R.'15A.—29.

St. Paul, & Sault Ste. Marie Railway Company, erect a modern passenger station in the city of New Richmond which shall be adequate for passenger traffic, plans to be submitted to the Commission for approval.

February 1, 1916, is considered a reasonable date at which the station herein ordered shall be completed and open for the use of the public.

Railroad Commission of Wisconsin, by David Harlowe, John H. Roemer, Halford Erickson, Commissioners.

IOWA RAILROAD COMMISSION.

J. J. MAHER

v.

CITIZENS OF JACKSON AND CLINTON COUNTIES ET AL.

[Docket E-127.]

Franchises — Jurisdiction to grant.

The Iowa Commission has jurisdiction to grant a franchise to build, construct, reconstruct, equip, maintain, and operate a transmission line for the purpose of conducting electricity for light, heat, and power.

Construction and equipment — Franchise privileges.

A franchise was granted to an individual to build, construct, reconstruct, equip, maintain, and operate a transmission line for the purpose of conducting electricity for light, heat, and power, subject to the conditions that it should not interfere with the use of public highways or private lands, and that it be constructed and operated in accordance with approved standards in order to secure safety and efficiency in operation.

Eminent domain — Grant to individual.

An individual applicant for a franchise to construct and operate a transmission line was ordered to have authority and be possessed of the right of eminent domain.

[January 26, 1915.]

APPLICATION of individual for franchise for electric transmission line; granted.

The appearances are set out in the opinion.

OPINION.

By the Commission: This is an application of J. J. Maher for a franchise to build, construct, reconstruct, equip, maintain,

and operate a transmission line for the purpose of conducting electricity for light, heat, and power purposes from the west boundary line of the city of Clinton, Clinton county, Iowa, to the east boundary line of the incorporated town of Goose Lake, Clinton county, Iowa; and from the west boundary line of the incorporated town of Goose Lake, Clinton county, Iowa, to the east boundary line of the incorporated town of Charlotte, Clinton county, Iowa; and from the north boundary line of the incorporated town of Goose Lake, Clinton county, Iowa, to the south boundary line of the incorporated town of Preston, Jackson county, Iowa, and along the south boundary line of the incorporated town of Preston, Jackson county, Iowa, to the west boundary line of the incorporated town of Miles, Jackson county, Iowa, all of said line having been heretofore constructed except that portion of said line between the town of Goose Lake and the town of Charlotte, Clinton county, Iowa.

This cause came on for hearing on the 15th day of September, A. D., 1914, at 3 o'clock of said day, at the Lafayette Hotel in the city of Clinton, Clinton county, Iowa, pursuant to a notice ordered published in the official newspapers of Jackson county and Clinton county, Iowa, respectively, as by law provided; and after an inspection of the notices of said hearing and the proofs of publication thereof, the Board finds that the notice prescribed by order of the Board has been published in the following newspapers, to wit: The Clinton Herald, the Clinton Daily Advertiser, and the DeWitt Observer, which are the official newspapers of Clinton county, Iowa; and in the Jackson Sentinel, Sabula Gazette, and Excelsior Record, which are all of the official newspapers of Jackson county, Iowa, and that the said notice was published in each of said newspapers as by law required, more than ten days before the date of said hearing, to wit, September 15, 1914.

That the said applicant in his said written application set forth and filed his consent that the provisions of chapter 174 of the Acts of the Thirty-fifth General Assembly of Iowa, and all laws and acts relating to public utilities and to the regulation, supervision, and control thereof, which are now in force, or which may be hereafter enacted, shall apply to his existing line or lines with the same force and effect as though said line or lines had been

constructed under the permit provided for in § 1 of said act, and the Board finds that the subject-matter is within the jurisdiction of this Commission.

Wolfe & Wolfe, attorneys at law, of Clinton, Iowa, appeared for the applicant; Parker, Parrish, & Miller, attorneys at law, of Des Moines, Iowa, appeared for the Iowa Telephone Company, and E. L. Miller, attorney at law, of Clinton, Iowa, appeared for the Preston Telephone Company; and the Preston Telephone Company and the Iowa Telephone Company filed with the Commission their written objections to the granting of the said franchise as prayed by the applicant as set forth in his said application. The officers of the Clinton County Telephone Company appeared for said company, but made no written objection to the granting of the application of the applicant herein, and thereupon the Clinton County Telephone Company and the said applicant came to an agreement as to the location of their respective lines, which agreement was afterwards reduced to writing and a copy thereof is now on file with his Commission.

And thereupon the Commission proceeded to hear the evidence and proofs of the applicant in support of his said application, and to hear the evidence and proofs of the said Iowa Telephone Company and the said Preston Telephone Company in support of their objections to the granting of said application.

And thereupon the Commission ordered that said hearing be adjourned and be continued upon a date hereafter to be fixed by the Commission, at the office of the Commission at the Capitol Building at Des Moines, Iowa; and afterwards the Commission did designate the 9th day of December, A. D., 1914, at the hour of 10 o'clock in the forenoon as the date upon which said hearing would be continued, and notice of said hearing was duly given to all parties represented at said hearing held in Clinton on September 15, 1914.

And afterwards on the 9th day of December, A. D., 1914, pursuant to said order of the Commission, the said hearing was continued at the office of the Commission at the Capitol in Des Moines, Iowa, and said applicant being represented by his attorney, John A. Reed, and said Iowa Telephone Company by its attorneys, Parker, Parrish, & Miller, and the said Preston Telephone Company by its attorney, A. G. Rippey, and at the hour

of 5 o'clock in the afternoon of said 9th day of December, 1914, the Commission ordered that said hearing be further continued until the hour of 10 o'clock in the forenoon of the 21st day of December, A. D., 1914.

Said hearing was continued and concluded on said 21st day of December, 1914, and the day following, the said parties being present and represented as upon December 9, 1914, and said hearing was further adjourned until the hour of 10 o'clock in the forenoon of the 29th day of December, A. D., 1914, for argument by counsel.

And on said 29th day of December, A. D., 1914, the Commission heard the arguments in behalf of each of the respective parties by their counsel representing them at the hearings held in Des Moines.

The Commission, being fully advised in the premises, finds that the said applicant is engaged in the sale and distribution for sale of electric current for light, power, and heating purposes, and that the electricity to be transmitted over the said lines constructed and to be constructed lies wholly within the counties of Clinton and Jackson counties, Iowa. That it is for the interest and for the benefit of the public, as well as the applicant, that the applicant be authorized to construct, equip, reconstruct, maintain, and operate a transmission line along and across any public lands, highways, streams, and lands of any person or persons, and to acquire the necessary interest in real estate therefor along and upon the following route and location, except so much thereof as is within the corporate limits of said towns of Goose Lake, Preston, and Miles, to wit:

[Here follows a detailed description of the route and location.]

And the right is hereby granted to the said applicant for the period of twenty-five years, unless sooner modified by act of legislature or other lawful method, to reconstruct, use, equip, maintain, and operate the above-described transmission line already constructed in the place where said line is now located, and to build, construct, reconstruct, maintain, and operate the above-described transmission line between Goose Lake and Charlotte, which has not heretofore been constructed, in the location hereinbefore set out, all for the purpose of distributing electric current for light, heat, and power purposes, across, along, and upon

the real estate and highways hereinbefore described, and upon all public grounds or highways intersecting or embracing any portion of the above-described right of way, and also over and across any flowing stream intersecting said right of way, and shall be possessed of the rights of ingress and egress to the said transmission line over lands abutting thereon, as fully and completely as may be conferred by this Board under and by virtue of the act of the thirty-fifth general assembly of Iowa, authorizing the Board to grant the franchise for the construction of electric transmission lines for the purposes herein set forth. Said franchise, however, is granted subject to the following conditions:

First. That the said transmission line shall be so constructed and maintained as not to interfere with the use by the public of the highways and streams of the state, nor to unnecessarily interfere with the use of any private lands by the occupant thereof.

Second. That no guy wires shall be stretched across or located on private property unless the same shall be attached to posts not less than 7 feet above the ground, if the same can be done with entire safety, without requiring additional wire supports or braces, provided, however, that guy wires may be used on private property if such wires are inclosed within a lawful fence so as to give adequate protection to animals on said property from said wires; and provided, further, that these requirements as to any guy wires may be waived by mutual agreement between the property owner and the said applicant.

Third. That all of the material used in said transmission line shall be of good quality and the workmanship first class in accordance with approved standards, and the construction of said line shall also fully comply with the provisions of chapter 174 of the Acts of the Thirty-fifth General Assembly of Iowa.

Fourth. That whenever the said transmission line of the said applicant crosses the toll lines of the Iowa Telephone Company, the said crossing and adjoining span shall be constructed as provided in the specifications for overhead crossings of electric light and power lines, adopted by the National Electric Light Association at its annual meeting in the year 1911.

Fifth. That wherever the said electric transmission line of the applicant crosses the wires of the Iowa Telephone Company, extending from its main lead to its subscribers' residences, the

Iowa Telephone Company shall have the right to place its wires in 1 inch iron pipes across the highway, underground, and the actual and reasonable cost and expense thereof is to be paid by the said J. J. Maher to the Iowa Telephone Company, the average cost of each of said crossings, however, shall not exceed \$25, provided, however, that the said J. J. Maher shall be under no obligation to maintain said underground crossings nor to pay the expense of any future crossings of his said power line by the lines of the Iowa Telephone Company.

Sixth. That the said J. J. Maher shall reduce the voltage of his transmission line to 2,300 volts from the point where his said transmission line turns to the east on the north line of section 32, township 84, range 5 east of the 5th P. M., to the west corporate limits of the town of Miles.

Seventh. That the said J. J. Maher shall, on or before March 1, 1915, pay to the secretary of this Commission the sum of \$325 for the use and benefit of the Preston Telephone Company and to be paid by the secretary of this Commission to the said Preston Telephone Company when the said Preston Telephone Company shall have removed its telephone line to the opposite side of the highway of that now occupied by the power line of the applicant, between the town of Goose Lake, and the intersection of the north and south, and east and west, highways at or near the northwest corner of section 32, township 84, range 5 east of the 5th P. M., provided that the said Preston Telephone Company shall so remove its line on or before March 1, 1916; the Preston Telephone Company failing so to do by said date, the said deposit shall be returned by the secretary of this Commission to the said Maher.

Eighth. That the said J. J. Maher shall also construct his said crossings and adjoining span of his power line, wherever the same crosses the lines of said Preston Telephone Company (if the same has been moved to the opposite side of the highway as hereinbefore set out) in accordance with the specifications for overhead crossings of electric light and power lines, adopted by the National Electric Light Association at its annual meeting in the year 1911; and wherever the wires of the Preston Telephone Company, extending from its main lead to subscribers' residences, after the said main lead of the Preston Telephone Company has been moved and relocated as herein provided, shall pass under-

neath the said transmission line, then the said J. J. Maher shall, at his own expense, place said wires of the Preston Telephone Company in 1 inch iron pipes across the highway underground. This provision, however, shall only apply to the wires leading to the residence of subscribers which are now being served by the said Preston Telephone Company, and after such wires are placed underground, the said J. J. Maher shall be under no obligation to maintain the same, nor to pay the expense of any future crossings of his said power line by the line of the said Preston Telephone Company.

Ninth. That the requirements that the said J. J. Maher shall erect his overhead crossings and pay the expense of the underground crossings of the lines of the said Iowa Telephone Company, all as set out in subdivisions 4 and 5 hereof, are made upon the express condition that the said Iowa Telephone Company, at its own expense, shall remove all of its telephone lines, which are now overbuilt by the transmission line of the said Maher, to the opposite side of the highway from that now occupied by said transmission line, including also approximately $\frac{1}{2}$ mile of line in the west side of section 35, Deep Creek township, Clinton county, Iowa, where the proposed line of the said Maher will be upon the same side of the road as the poles of the Iowa Telephone Company are now located.

The foregoing order, as set out in paragraphs 4 to 9, inclusive, except as to the amount of compensation provided in paragraph 7, are made pursuant to an agreement and understanding entered into between the respective parties at the close of the final submission and argument of the above-entitled cause.

It is further ordered that the said applicant herein shall have authority and be possessed of the right of eminent domain for the purpose of acquiring any of said right of way as provided and authorized by the act of the thirty-fifth general assembly of Iowa, hereinbefore referred to, and the right of exercising the said rights of eminent domain under the provision of chapter 4 of title 10 of the Code of 1897 of the Laws of Iowa, and all amendments thereto.

C. Thorne, Chairman, J. H. Wilson, Commissioner, Jno. A. Guilha, Commissioner.

Note.—It will be observed that among the conditions upon which the franchise was granted was one requiring the construction of crossings of the transmission line and telephone lines to be as provided in the specifications for overhead crossings of electric light and power lines adopted by the National Electric Light Association in 1911.

LOUISIANA RAILROAD COMMISSION.

IN RE APPLICATION OF TREMONT & GULF RAILWAY
COMPANY, EX PARTE.

[No. 2267; Order No. 1851.]

Railroads — Abandonment of track.

A railway company was authorized to remove its rails on a branch line, notwithstanding the fact that a prospective individual shipper would be inconvenienced thereby, where it was found upon inspection that little or no business existed there, that the track was in unsafe condition, and that extensive repairs would be required upon the road-bed and bridges.

[January 12, 1915.]

APPLICATION for removal of rails on branch line: granted.

By the **Commission**: Permission is desired to take up the main line rail on what is known as the Pyburn Branch of the Tremont & Gulf Railway, running from Menefee to the old Pyburn connection with the Chicago, Rock Island, & Pacific Railway.

The case was taken up by the Commission on December 14, 1914, at a session held in Baton Rouge, due notice having been previously given to the general public and to interested parties. The investigation showed that the mill at Pyburn was abandoned in 1909 and little or no business exists at that point, nor is there any industrial track between the Pyburn connection of the Chicago, Rock Island, & Pacific Railway and the point to which it is desired to take up the rail. Witnesses for both sides were examined. The Commission, in order that the investigation might be complete, requested Commissioner Bridges to make an inspection of the branch road, as well as the adjacent country and its present condition and prospects. The Commissioner, in due course, made a careful investigation, and reported having

found the track in such bad condition as to render it unsafe for the operation of trains. To put the said track and roadbed in fit condition would require 1,000 to 1,500 cross-ties to the mile; all the bridges would have to be repaired and the fills would require ditching and widening. The steel on the line, as second-hand steel, is worth probably \$26,000. Mr. W. M. D. Gaar, who opposes the granting of the application, stated that he had in pine and hardwood some seven or eight million feet. To put this timber in condition to be transported by the railroad will take him eight or ten years, and the revenue to be derived by the railroad for the moving of the entire 8,000,000 feet will be about \$8,000, or about \$1,000 annually.

In order to move his timber it will only be necessary for Mr. Gaar to haul same a mile and a half or two miles farther than at present; namely, to points on the main line of the Tremont & Gulf or the main line of the Chicago, Rock Island, & Pacific.

For these reasons, the Commissioner recommends that the authority prayed for be granted. The premises considered, it is ordered that the application of the Tremont & Gulf Railway Company for authority to remove the rail on the Pyburn Branch of the Tremont & Gulf Railway from Menefee junction to the point at which the old Pyburn connection with the Chicago, Rock Island, & Pacific Railway was taken out several years ago, be, and the same is hereby, granted.

By Order of the Commission, Shelby Taylor, Chairman, B. A. Bridges, John T. Michel, Commissioners.

LOUISIANA RAILROAD COMMISSION.

ALEXANDRIA CHAMBER OF COMMERCE

v.

EXPRESS COMPANIES.

[No. 2168; Order No. 1852.]

Rates — Express — I. C. C. block system adopted.

The Louisiana Commission, after an investigation of intrastate express rates, established such rates on the block system as outlined by the Interstate Commerce Commission.

Rates — Classification — Commodity rates.

The Commission dismissed a petition for the reduction as unreasonable of the rate on beer, refusing to allow a lower rate on that commodity than upon others, such as fruit, vegetables, butter, eggs, etc., most generally used by the public, for all of which a commodity or class rate had been established by order No. 1693, March 12, 1914.

[January 12, 1915.]

PETITION for reduction of rate on beer; dismissed.

By the Commission: Complainant in this case, the Alexandria Chamber of Commerce, attacks as unjust and unreasonable the existing rates on shipments of beer between points in Louisiana.

The case was taken up for hearing by the Commission at a session held in Baton Rouge on December 15, 1914, all interested parties having previously been notified. A full and complete investigation was made.

During February of last year the Commission made a most exhaustive investigation of the express rates in Louisiana, and by its order No. 1693, of March 12, 1914, established intrastate rates on the block system as outlined by the Interstate Commerce Commission. However, in instituting the block system in Louisiana, the Commission established rates on certain commodities most generally used by the public. Among these commodities the Commission listed beer, and provided that it should be carried at the rates set forth in table 1 of said order No. 1693, wherein the same rates are also provided for fruit, vegetables, butter, eggs, oysters, fish, bread, and other food products. The Commission cannot justify a lower rate on beer than on the above-named and kindred commodities, and it is not at this time inclined to disturb any of the commodity rates set forth and established by order No. 1693.

It is therefore ordered that the petition in this case be, and it is hereby, denied, and the case dismissed.

By Order of the Commission, Shelby Taylor, Chairman, B. A. Bridges, John T. Michel, Commissioners.

LOUISIANA RAILROAD COMMISSION.

PARLIN & ORENDORFF COMPANY

v.

ST. LOUIS, IRON MOUNTAIN, & SOUTHERN RAILWAY
COMPANY, AND VICKSBURG, SHREVEPORT, & PA-
CIFIC RAILWAY COMPANY.

[No. 2248; Order No. 1854.]

Rates — Return shipment.

A rule fixing the basis for rates to be applied on shipments returned to the shipper at the point of origin is inapplicable to a shipment not returned to the point of origin.

Rates — Higher charge for opposite direction.

It is a violation of rule 13 of the Louisiana Commission, providing that "the rates prescribed by the Commission shall (except in cases specified) apply in either direction," to charge a higher rate for transportation of freight in one direction than is applicable in the opposite direction, although such higher rate appears in a duly filed and authorized tariff.

Rates — Filing — Authority number — No evidence of reasonableness.

The authority number issued to carriers by the Commission upon the filing of their rates indicates simply that the tariff has been regularly filed and has become a part of the records of the Commission, but it is no evidence of the reasonableness of such rates.

Rates — filed tariffs — Corrections.

It is the Commission's duty to require that published and filed tariffs be corrected to conform to its rules and orders, when its attention is called by the filing of a complaint to a violation of such rules and orders.

Rates — Reparation — Authorized tariff.

The Commission will order reparation where it appears that excessive freight charges have been collected in violation of its rules and orders, although an authorized tariff containing the excessive rate has been filed and published.

[January 26, 1915.]

COMPLAINT alleging application of unreasonable rate; claim for reparation allowed.

By the **Commission**: This case presents to the Commission for determination the question of whether, on one carload of farm implements shipped from Newellton to Shreveport, Louisiana, *via* the St. Louis, Iron Mountain, & Southern Railway and the

Vicksburg, Shreveport, & Pacific Railway, the correct transportation rate and charge was made.

The bill of lading covering the shipment, dated July 31, 1914, shows that the shipment was billed at the weight of 24,000 pounds, and a through rate of 64 cents per 100 pounds was charged and collected by the carrier for its transportation. The freight charges were paid at Shreveport, the point of delivery, by the consignees, Parlin Orendorff Implement Company, and they have filed this complaint, alleging that an unlawful rate has been applied, and asking for redress in the form of an order requiring that the charges in excess of the legal rate in effect at the time the shipment was made, be refunded.

The complainants demanded protection of the rate they claimed as the legal rate by the carrier, and their claim was denied. They therefore, after protesting that the rate assessed was illegal, paid the charges, and filed their complaint with this Commission.

Complainants base their demands upon rule 55-E of this Commission, reading as follows:

"55-E. Amended. No through freight rates to or from stations in Louisiana shall exceed the lowest combination of mileage rates less 10 per cent: provided, that when specific class or commodity rates applying to or from junction points result in making a lower through rate without deduction of 10 per cent, such combination will apply. When two published specific class or commodity rates are used, no deduction will be made. When a through rate is constructed by use of specific class or commodity rate, applying to or from the junction point and mileage rate beyond, a deduction of 10 per cent will be made only from the mileage rate."

This rule was adopted July 25, 1912, by order No. 1437, of this Commission, and was in effect when the shipment in controversy moved.

Was the rate charged in excess of the lowest combination of local rates in effect at the time of shipment? is the question defendants must answer. If not, there was an overcharge, and consequently a violation of an order of this Commission, entitling complainant to reparation.

Complainants claim that the correct rate, as authorized by the

Commission, to have applied on the shipment, was 45 cents per 100 pounds. The further contention is made by the complainants that any rate over and above 20 cents per 100 pounds for the transportation of farm implements from Newellton to Shreveport was and is unreasonable, and that rate the Commission is asked to establish for future shipments between these points, and to require that it be applied to the shipment which has already moved.

Complainants also invoke rule 64-a of the Commission, as applicable. Rule 64-a fixes the basis for rates to be applied on shipments returned to a shipper at the point of origin of the shipment. As the shipment involved did not originate at Shreveport, it cannot be classed as a return shipment, and rule 64-a does not apply.

At the time the shipment moved, it appears from tariffs on file in our records, duly authorized by the Commission, that the class A rate from Shreveport to Newellton was 34.9 cents per 100 pounds, this being a combination of the class A rate of the Vicksburg, Shreveport & Pacific Railway Company from Shreveport to Tallulah of 25 cents per 100 pounds (V. S. & P. tariff 557-C) with the class A rate of the St. Louis, Iron Mountain, & Southern Railway Company from Tallulah to Newellton, of 11 cents per 100 pounds (St. L. I. M. & S. tariff 961-A), less 10 per cent. The rates of the Vicksburg, Shreveport, & Pacific Railway Company from Shreveport only apply in one direction. Rule No. 13 of the Commission provides that "the rates prescribed by the Commission shall (except in cases specified) apply in either direction," *i. e.*, "between."

There is no reason shown why the defendants should charge almost twice as much for hauling freight over their lines from Newellton to Shreveport as they charge for a haul of a similar commodity in the opposite direction. The mere filing of a tariff with the Commission, and the issuance of its authority for such rates, is no evidence of the reasonableness of such rates, and when the rates in the tariffs so filed are unreasonable, or not published in accordance with the rules and orders of the Commission, the authority issued does not protect the carrier against such violation. It is the duty of the carriers to have their rates conform with the Commission's rules. The authority number given the

carriers by the Commission, and the filing of their tariffs, indicates simply that the tariff has been regularly filed, and became a part of the records of the Commission.

When the Commission's attention is called, by the filing of a complaint, to violation of its rules or orders in published and filed tariffs, it becomes its duty to require that the tariffs be corrected to conform to its rules.

It is plain that the rate assessed on the shipment under consideration was in excess of the rate applicable in the opposite direction. This in itself is a violation of the rules of the Commission. The carrier's duty is to apply the lowest combination of rates in effect at the time a shipment moves, and also to charge the same rates in either direction, unless, by an order of the Commission, it is especially excused from doing so. There was tariff authority for charging the higher rate to Newellton than was in effect in the opposite direction. However, the rate was unreasonable. The mere naming of a rate in a published tariff does not fix the rate as a reasonable rate. If that were true, thus every rate would be reasonable, because every rate which is charged is borne in some published tariff. The Commission could not fix any new rate, on such a theory, because, somewhere, in some obscure corner of a rate sheet, a rate can be found which can be applied to the shipment. This is not in accordance with the theory or practice of rate regulation. The rate on the shipment here involved should not exceed the rate from Shreveport to Newellton. The lowest combination of rates from Shreveport to Newellton applicable on farm implements is, according to the tariff heretofore named, 34.9 cents per 100 pounds; and this rate should be applied on a similar shipment from Newellton to Shreveport.

The premises considered, it is ordered that the Vicksburg, Shreveport, & Pacific Railway Company and the St. Louis, Iron Mountain, & Southern Railway Company, be, and they are hereby required, to charge no higher rate than 34.9 cents per 100 pounds on shipments of farm implements, carloads, between Newellton and Shreveport, Louisiana, and other points on their lines, this being the rate in effect on such shipments from Shreveport to Newellton. This rate to be applied on the shipment covered by

bill of lading dated July 1, 1914, from Newellton to Shreveport, filed in the record in this case.

It is further ordered that complainant's petition for the establishment of a rate of 20 cents per 100 pounds to apply on the above shipment, and on further shipments, between Newellton and Shreveport, on farm implements, carloads, be, and it is hereby, denied.

By Order of the Commission, Shelby Taylor, Chairman, B. A. Bridges, John T. Michel, Commissioners.

LOUISIANA RAILROAD COMMISSION.

LAFAYETTE CHAMBER OF COMMERCE

v.

EXPRESS COMPANIES.

[No. 2185; Order No. 1855.]

Rates — Express — I. C. C. block system.

The Commission, finding that the adoption of the block system of express rates as prescribed by the Interstate Commerce Commission had resulted in an unreasonable increase in rates upon first-class merchandise at two points peculiarly located, ordered that such points should, for express-rate purposes, be given a different block number, taking a lower rate.

[January 26, 1915.]

COMPLAINT against advance in express rates; reduction ordered.

By the **Commission**: The Lafayette Chamber of Commerce filed a complaint with this Commission on the 20th of July, 1914, against the advance in rates between New Orleans and Lafayette on commodities taking first class under the official express classification, resulting from the adoption by this Commission of the block system of express rates, as prescribed by the Interstate Commerce Commission. The reasons for the adoption of this system have been stated in previous orders of this Commission.

Following the filing of the Lafayette complaint, the Opelousas Progressive League filed a complaint which was to the same effect,

and asking for the same relief as the Lafayette Chamber of Commerce, and the cases were consolidated and heard together.

It is apparent from the record that by reason of their peculiar location, both Opelousas and Lafayette have had to stand increases in rates from points to the east, which are unreasonable. These two cities are located in block 1933-Q, the block line practically passing through the town of Lafayette. The rates in the block in which Lafayette and Opelousas are located are higher than in block 1934, to the east thereof. It has been shown that the greatest amount of express business to and from Lafayette and to and from Opelousas moves to and from New Orleans and points east of these places. We do not think that the advances which have resulted from the adoption of the block system of express rates in the case of Lafayette and Opelousas on first-class merchandise are justified, and we will, therefore, for rate-making purposes, name Lafayette and Opelousas as being in block 1934-N. This will result in lowering the rate between these places and New Orleans and points eastward. This, we believe, will remedy the just complaint of the Lafayette Chamber of Commerce and the Opelousas Progressive League. It is therefore ordered that, effective February 1, 1915, and until further ordered by the Commission, the towns of Lafayette and Opelousas shall, for express-rate-making purposes, be considered as located in block 1934-N, and the rates to and from these points shall be readjusted accordingly.

On February 23rd, an order was issued placing Opelousas in block 1934-E, and the order made effective February 15, 1915.

LOUISIANA RAILROAD COMMISSION.

ORDER NO. 1856.

Rates — "Car rental" discontinued.

All railroads in the state of Louisiana were ordered to discontinue charging "car rental" on cars containing freight transported from one point to another within prescribed switching limits at published switching rates, or elsewhere in the state of Louisiana.

[January 27, 1915.]

"CAR rental" charges ordered discontinued.

By the **Commission**: At a general session of the Railroad Commission of Louisiana, held in its office in Baton Rouge on January 27, 1915, the Commission having under consideration the question of car rental as assessed by certain railroads in the state of Louisiana within switching limits at terminal points, in addition to the switching charges published by such carriers, the Commission being of the opinion that car rental charges are not proper, and having submitted the question of the legality of such charges to its counsel, Assistant Attorney General Barrow, received his opinion that such charges are illegal.

Therefore, it is

Ordered, That all railroads in the state of Louisiana be, and they are hereby, commanded and required to cease and desist hereafter from charging "car rental" on cars containing freight transported from one point to another within prescribed switching limits at published switching rates, or elsewhere in the state of Louisiana.

It is further

Ordered: 1. That the question of the reasonableness of the existing switching rates is not determined at this time.

2. That this order has no reference to and is not in any respect related to the demurrage charges which have been established by orders of this Commission.

By Order of the Commission, Shelby Taylor, Chairman, B. A. Bridges, John T. Michel, Commissioners.

LOUISIANA RAILROAD COMMISSION.

LOUISIANA & NORTHWEST RAILROAD COMPANY, EX PARTE.

[No. 2297; Order No. 1857.]

Service — Passenger trains — Adequacy.

The Commission will not relieve a railroad company from the duty of furnishing adequate train service, which the Commission considers to be the operation of at least one passenger train each way a day over the entire length of its line in the state, where it appears that the rail-

road is receiving a fair operating revenue, and has for years put back its earnings into properties without increasing its capitalization.

[January 28, 1915.]

APPLICATION for permission to discontinue certain passenger trains; denied.

By the **Commission**: The Louisiana & Northwest Railroad and George W. Hunter, Receiver, have filed with the Commission an application for permission to discontinue certain trains on its line in Louisiana. The present passenger train service is supplied by the following trains:

No. 1, leaving McNeil, Arkansas, 6:15 p. m., daily, arriving at Homer 8:15, Gibbsland 9:25, Bienville 10:17, Saline 10:52, Chestnut 11:20, Natchitoches 1:25. This train turns around at Natchitoches, becomes train No. 2, and leaves that point at 1:10 p. m., arriving at Chestnut at 2:25, Saline 2:55, Bienville 3:40, Gibbsland 4:30, Homer 6:05, and McNeil, Arkansas, 8:30. There is also a freight train upon which passengers are carried, which runs southward over the line from Homer to Natchitoches on Mondays, Wednesdays, and Fridays, leaving Homer at 7:30, and arriving at Natchitoches at 4:30. On Tuesdays, Thursdays, and Saturdays, the freight train leaves Natchitoches at 7:30 a. m., and arrives at Homer 4:30 p. m.

It is proposed to operate passenger train No. 1 on a later schedule, leaving McNeil, Arkansas, at 8:20, Homer at 10:50, and arrive at Bienville at 1 p. m., stopping there; returning the train would leave Bienville at 1:30, arrive at Gibbsland at 2:23, Homer 3:35, and McNeil, Arkansas, 6:20. It is proposed to operate a freight train, carrying passengers, from Natchitoches to Bienville and return, daily, leaving Natchitoches at 7:30, arriving at Bienville at 11:40, and returning, leaving Bienville at 1:20, arrive at Natchitoches at 5 p. m. It is proposed to operate a tri-weekly freight train from Homer to Bienville, and from Bienville to Homer, connecting at Gibbsland with V. S. & P. train No. 2, said freight train arriving at Homer at about 6:30 p. m.

The Louisiana & Northwest Railroad operates over 96.1 miles in the state of Louisiana, and on this track they are now furnishing one exclusive passenger train each way daily. They propose to furnish one exclusive passenger train each way daily

between the state line and Bienville, and no exclusive passenger trains south of Bienville. The application is based upon allegations that the company has been losing money, and is attempting to reduce its operating expenses by the curtailment of passenger train service.

The investigation in this case does not convince us that the proposed changes are necessary. We have already announced in the case of Re Morgan's L. & T. R. & S. S. Co., reduction of train service, order No. 1834, that the minimum passenger train service on a branch railroad that the Commission will require is one passenger train each way daily. This, of course, applies to branches of importance, and the ruling could not be modified as to main lines of railroads.

It appears from the evidence taken by the Commission that the Louisiana & Northwest Railroad Company has received a fair operating revenue, that is, the total freight and passenger revenue is considerably greater than the total operating expenses, either on the basis of revenue per train mile, or on the basis of total receipts and expenses, exclusive of fixed charges. It appears that for a number of years the company has been putting back into its properties all of the money it earned above its operating expenses, and has also bought new equipment and made additions and betterments without increasing its capital stock or its bonded indebtedness.

There is evidence of a falling off in business during the last few months of the calendar year 1914, which is the common complaint of all railroads and all businesses in this territory; but we cannot, upon the showing made, relieve the company from what we consider its duty in the matter of furnishing adequate passenger train service, which is, that it must operate at least one passenger train each way a day over the entire length of its line in the state of Louisiana.

The premises considered, it is ordered that the application of the Louisiana & Northwest Railroad for permission to discontinue its exclusive passenger train service south of Bienville, and to substitute therefor a freight train upon which passengers are carried, be, and the same is hereby, denied.

Shelby Taylor, Chairman, B. A. Bridges, John T. Michel, Commissioners.

LOUISIANA RAILROAD COMMISSION.

RAILROAD COMMISSION OF LOUISIANA

v.

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY ET AL.

[No. 2296; Order No. 1869.]

Railroads — Service — Interchange of facilities.

A reasonable necessity for an order requiring that an interchange track be arranged for direct connection between railway lines does not exist where it is shown that such connection would only have been utilized for twelve cars of freight in six months.

Rates — Switching charges — Absorption.

The rules of the Commission regulating charges on joint through shipments where there is no established joint through rate contemplate the absorption of all interchange charges by one of the carriers.

Rates — Switching charges — Absorption by initial carrier.

Initial carriers were ordered to protect the sum of the lowest local rates or the sum of the mileage rates less 10 per cent on shipments moving from points on their lines to points on connecting lines *via* a certain junction point, where there were no through rates established, and to absorb the switching charges.

[January 29, 1915.]

PROCEEDING to compel interchange track between railways arranged for direct connection. Application denied; but ruling as to charges over connecting lines and absorption of switching charges made.

By the Commission: This investigation, begun by the Commission upon the complaint of the Crowley Oil & Mineral Company, relates to interchange facilities at Eunice between the Louisiana Western Railroad, the Texas & Pacific Railway, and the New Orleans, Texas, & Mexico Railroad, with a view of requiring that the interchange track shall be so arranged and constructed as to make direct connection between any two of the lines involved.

The hearing has developed the fact that cars arriving on the Texas & Pacific Railway, in order to reach an industry located on the Southern Pacific, must move over the Frisco interchange, and therefore two switching movements are necessary. It appears

that for a period of six months only twelve cars of freight arriving on the Texas & Pacific Railway, destined to an industry on the Southern Pacific tracks at Eunice, or originating on the Southern Pacific tracks at Eunice and destined to a point on the Texas & Pacific Railway, have been handled through the Frisco interchange. It does not appear from the record before us that there is a reasonable necessity for an order requiring direct connections to be made between all of the lines.

The most important phase of the case is that relating to through shipments originating either on the Southern Pacific destined to a point on the Texas & Pacific, or originating on the Texas & Pacific destined to a point on the Southern Pacific. Prior to July, 1913, the Southern Pacific and its connections charged on shipments originating at Southern Pacific points, destined to Texas & Pacific points, moving through Eunice, the combination of the two local rates to and from Eunice, the initial line absorbing the switching charges of the Frisco interchange at that point. About the 1st of July, 1914, the Southern Pacific refused to pay or absorb this switching charge in future, and the Frisco (New Orleans, Texas, & Mexico Railroad) refused to handle the cars unless their switching charge of \$2.50 per car was guaranteed. The Morgan's Louisiana & Texas Railroad & Steamship Company refused to pay or guarantee this charge, and consequently demands made upon the shipper for its payment, and the controversy over the payment of these charges, are responsible for the proceedings in this case.

The rules of the Commission require that on joint through shipments where there is no established joint through rate, the sum of the local mileage rates, less 10 per cent. shall apply, except in cases where there are commodity rates established which are lower, in which case the sum of the commodity rates, or the sum of the local mileage rate and the commodity rate, shall apply to the shipment.

This contemplates the absorption of all interchange charges by one of the carriers; and it is customary for the initial carrier in such cases to absorb the charges which accrue before delivery to the delivering line. The Morgan's Louisiana & Texas Railroad & Steamship Company and the Texas & Pacific Railway Company should, therefore, protect the through rate on shipments

originating from points on their lines to points on their connections *via* Eunice, and where such through rate is made by using the sums of the local mileage rates less 10 per cent, they should absorb the switching charges at the junction point, as has been done for many years prior to July, 1914.

The premises considered, it is therefore ordered that the Morgan's Louisiana & Texas Railroad & Steamship Company and the Texas & Pacific Railway Company be, and they are hereby, commanded and required to protect, on shipments moving from points on their lines to points on connecting lines *via* Eunice, where there are no through rates established, the sum of the lowest local rates, or the sum of the mileage rates less 10 per cent, and to absorb on shipments originating on their lines, the switching charge of the New Orleans, Texas, & Mexico Railroad Company at Eunice.

It is further ordered that this ruling shall be made to apply on all shipments moving *via* Eunice, on fuel, oil, or other commodities, from and after the date when it discontinued absorbing the said switching charge of \$2.50 per car.

Shelby Taylor, Chairman, B. A. Bridges, John T. Michel, Commissioners.

NEBRASKA STATE RAILWAY COMMISSION.

IN RE MAXWELL & BRADY TELEPHONE COMPANY.

[Application No. 2192.]

Telephone rates — Increase — Charges insufficient for reasonable return.

A telephone company was authorized to increase its farm-line rates and to establish a new farm-line switching rate where its earnings from its present rates were insufficient to meet operating expenses, including maintenance and depreciation, and pay an 8 per cent return on its capital liabilities.

Valuation — Overcharging capital account — Deduction.

The amount which should have been charged to plant construction, where the capital account had been overcharged with operating expenses, was held determinable by subtracting an 8 per cent annual depreciation and maintenance allowance on the cost of reproduction new, from the sum of the amounts actually charged to the capital account and to maintenance.

Return — 8 per cent allowance — Telephone plant.

A return of 8 per cent on capital liabilities of \$10,000 was considered to be a very conservative allowance where the reproduction new value of a telephone company's property was found to be \$27,003, and its depreciated value \$18,095.64, and where it was shown that the company was paying 10 per cent per annum for borrowed capital.

Rates — Advance payments — Discounts.

A telephone company's rate schedule which provided for payment of farm bills six months in advance, with a discount of 25 cents per month for payment by the 30th of the month in which bill is rendered, and which provided for payment of switching service one year in advance, with a discount of \$1 for payment by the 30th of the month in which bill is rendered, was approved, it being assumed that the discount system would stimulate collections.

[February 5, 1915.]

APPLICATION to increase rates; granted.

Appearances: George L. Swancutt for applicant.

ORDER.

Taylor, Commissioner: Applicant was formerly a corporation, but the property is now owned and operated by a private individual, George L. Swancutt. The telephone system involved comprises two exchanges at Brady and Maxwell, with farm lines covering a large territory. There are 458 subscribers on the system, 311 of which are on the farm lines and would be affected by the increases proposed in this application. The rates now in effect are as follows:

Business	\$1.50 per month
Residence	1.00 " "
Farm line, first two years	1.50 " "
" " after first two years	1.00 " "

The rate for farm service differs from that usually charged in that it is higher for the first two years, the purpose being to cover a portion of the cost of constructing the lines. Owing to the fact that the territory served by this system is rather sparsely settled, and to the further fact that the country is very rough, the farm lines are unusually long, some of them reaching a distance of 22 to 25 miles. This condition increases the original cost, and adds materially to the expenditures for maintenance and depreciation.

Applicant desires to increase the farm-line rate from \$1 to \$1.50, and to establish a discount from the new rate of 25 cents

per month, provided payment is made six months in advance. It is also desired to establish a farm-line switching rate of \$6 per year, with a discount of \$1 if paid in advance.

At the hearing held on the application, representatives of the patrons did not appear in person, but a statement, purporting to be a resolution adopted at a meeting of some of the patrons, was submitted and made a part of the record. The statement is devoted largely to the condition of the plant and to complaints as to the kind of service now being rendered. Protest is made against any increase in the rates until the service is improved.

While Mr. Swancutt offered considerable testimony relative to the general conditions under which he is operating the plant, he was unable to supply any definite figures covering his investment, operating expenses, and cost of maintenance. For that reason the Commission finds it necessary to rely for these facts on the annual statements filed in this office and on a valuation made by its engineer, Mr. Forbes. The annual reports are more or less incomplete and are doubtless the result of estimates made by Mr. Swancutt, but they afford some idea of the operating conditions and will be used in the absence of anything better.

Summarizing these annual reports for the five years ending June 30, 1914, we have the following result:

Gross Earnings.			
Rentals	\$26,467.00		
Tolls	2,200.00		
Total	\$28,667.00		\$28,667.00
Expenses.			
Maintenance	\$2,129.00		
Operation	6,680.00		
General	7,800.00		
Total	\$16,609.00		\$16,609.00
Net operating income			\$12,058.00
Deductions from Income:			
Taxes	\$ 165.04		
Interest	1,965.00		
Total	\$2,130.04		\$2,130.04
Net Surplus			\$9,927.96
New construction			\$12,800.00
Indebtedness	From \$4,900 to		\$7,050.00
Average of accounts receivable			\$2,555.00

Conditions more or less abnormal reveal themselves in this

statement. For example, during the five years covered, but \$2,129 was expended for maintenance, an average of \$425 per year. This is undoubtedly less than was actually expended for this purpose. Very likely a considerable portion of the \$12,500 that is charged to new construction should have been charged to maintenance and depreciation. The reproduction new value of the property, as found by Engineer Forbes, is \$27,003. Applying 8 per cent to that figure as a normal allowance for maintenance and depreciation, we have \$2,160.24 per year, or \$10,801.20 for the five years. Subtracting that amount from \$14,929, the total expenditures for maintenance and new construction, we have \$4,127.80, which very likely comes nearer to representing the actual amount expended for new plant than the figure given. Another striking feature of the statement is the large sum represented in "accounts receivable," the average for the period being \$2,555. Commencing with 1910, the amounts outstanding for the various years were as follows: 1910, \$2,000; 1911, \$1,800; 1912, \$3,100; 1913, \$3,040; 1914, \$2,839. The accuracy of these figures is supported by the testimony of Mr. Swancutt. He states that but a slight portion of this is uncollectable, but that with such large sums outstanding he is forced to borrow money for the operation of his plant, and that the interest thus incurred constitutes a substantial burden upon the net income. The interest rate is above the normal, averaging 10 per cent.

Applicant is unable to state the exact amount of his investment in the plant. The original company had a capital stock of \$2,000. Mr. Swancutt states that he paid about \$1,800 for the property when he took it over, but is uncertain as to the exact amount he has put into it since that time. Assuming, however, that he has invested \$2,000 of his own money in the plant, and adding the present outstanding indebtedness, the capital liabilities would aggregate \$10,000, which is very likely a conservative figure. As heretofore stated, Engineer Forbes found the reproduction new value of the property to be \$27,003. He also found the present, or depreciated, value to be \$18,095.64. While he did not make a detailed inventory of the plant, his inspection was of sufficient extent to warrant his belief that the figures shown, particularly the present value, are very conserva-

tive. His valuation includes none of the property that has been constructed by patrons of the company, of which there is a considerable amount in this plant.

An application of the conclusions above arrived at, to the operating conditions of 1914, produces the following results:

Gross Earnings.			
Rentals	\$5,751.00		
Tolls	500.00		
		\$6,251.00	\$6,251.00
Expenses.			
Maintenance (8 per cent on the reproduction value of \$27,003)	\$2,129.00		
Operation	1,400.00		
General	2,000.00		
		\$5,560.24	5,560.24
			\$690.76
Deductions from Income:			
Taxes	\$43.00		
Interest ..	500.00		
		\$543.00	543.00
			\$47.76
Dividends (8 per cent on \$10,000)	\$800.00		
Less interest actually paid	500.00		
		\$300.00	300.00
Annual deficit			\$252.24

This calculation indicates that the present rates are not sufficient to properly maintain the property and pay a reasonable return on the investment. It is doubtful if an allowance of 8 per cent on the reproduction new value will, in this case, produce enough money to adequately maintain the plant, because of the unusually long lines and the rough country over which they are constructed. No allowance is made in the calculation for uncollectable accounts, on the assumption that the installation of a discount system will stimulate payments and materially facilitate collections. It is probable, however, that a certain portion of the revenue will be uncollectable, and, judging from past experience in this plant, the amount is likely to exceed the normal of 2 per cent of the gross. In view of the fact that applicant has been paying 10 per cent interest on his indebtedness for several years, the allowance of 8 per cent for dividends appears very

conservative, particularly when it is considered that no dividends have ever been paid.

Mr. Swancutt performs practically all of the duties connected with the operation of the business, except the operation of the switch board, which labor is performed by two girls at each exchange. He is manager, bookkeeper, collector, and lineman. It is obvious that in a system involving about 460 telephones, one man cannot perform all of these duties satisfactorily, either to himself or to his patrons. Mr. Swancutt admits that he should have a lineman to devote his full time to the maintenance of the property, and the Commission is of the opinion that such assistance should be at once secured. It will insure prompter attention to all trouble complaints and a general raising of the standard of service.

At the present time there are no farm lines belonging to other companies switched at either exchange, and no rates are filed for such service. Applicant now desires to file a rate of \$6 per year for such service, \$5 per year if paid in advance. It is his intention, if the rate is approved, to give farm patrons the option of purchasing the lines by which they are now served, and to perform the switching service for them. The rate is similar to that in effect in many other companies in the state, and in the opinion of the Commission is reasonable.

In view of the difficulty experienced by applicant in making collections, it is apparent that some more effective method must be employed. The plan of granting a discount for prompt payment is one successfully used by many companies, and has been held to be a reasonable rule. It will be approved in this instance.

ORDER.

It is therefore ordered that the Maxwell & Brady Telephone Company be, and the same hereby is, authorized to charge and collect, until the further order of the Commission, the following schedule of rates, same to become effective on and after March 1, 1915:

Business	\$1.50	per	month
Residence	1.00	"	"
Farm line	1.50	"	"
Switching service	6.00	"	year

Farm bills are payable six months in advance. A discount of

25 cents per month will be allowed if payment is made on or before the 30th day of the month in which the bill is rendered.

Switching service is payable one year in advance. A discount of \$1 will be allowed if payment is made on or before the 30th day of the month in which the bill is rendered.

Nebraska State Railway Commission, Henry T. Clarke, Jr., Chairman.

Note.—Discounts for payment of bills within a specified period.

Rates which provide for discounts upon bills paid within a specified period are in very general use by public utilities.

In *Re People's Mut. Tel. Co.* (1914; Ill.) 35 A. T. & T. Co. Com. L. 63, 69, it was held that the practice of providing the discount from the regular monthly rental where payment is made on or before a certain date is reasonable and permissible, as it tends to diminish collection expenses and losses from unpaid rentals, and consequently to lighten the resulting burden upon the subscriber who pays promptly.

And in *Re Comstock Independent Tel. Co.* (1914; Neb.) 33 A. T. & T. Co. Com. L. 782, 786, the Commission said: "It is regarded as reasonable, and as good telephone practice, to establish a gross rate from which a discount can be made for prompt payment. The discount reduces collection expenses, and, by reducing the operating expense, tends to reduce the rate paid by the subscriber. A discount of 25 cents per month is customary and will be approved in this case."

Rate schedules offering discounts for the prompt payment of bills rendered subsequent to performance of service have been approved in the following cases:

Re Macon R. & Light Co. (1914; Ga.) 29 A. T. & T. Co. Com. L. 1072; *Re Oro Electric Corp.* (1913) 3 Cal. R. C. R. 429; *Re Abingdon Tel. Co.* (1914; Ill.) 35 A. T. & T. Co. Com. L. 74; *Re Rates Telephone Service Conference Ruling No. 13.* P. U. Com. Ill. (1914) 34 A. T. & T. Co. Com. L. 1008; *Re Fairview Tel. Co.* (1914; Kan.) 32 A. T. & T. Co. Com. L. 379; *Garden City Tel. Light & Mfg. Co. v. Garden City* (1912; Kan.) 16 A. T. & T. Co. Com. L. 594; *Preston v. Cons Gas, Electric Light & P. Co.* (1913) 4 Md. P. S. C. R. 59, 21 A. T. & T. Co. Com. L. 770; *McGregor-Noe v. Springfield Gas & Electric Co.* (1914) 1 Mo. P. S. C. R. 468; *Re Nebraska Tel. Co.* (1913; Neb.) 21 A. T. & T. Co. Com. L. 583; *Re Lincoln Tel. & Tel. Co.* (1914; Neb.) 28 A. T. & T. Co. Com. L. 441; *Re Crownover Tel. Co.* (1914; Neb.) 28 A. T. & T. Co. Com. L. 430; *Hobart-Pillsbury v. People's Gaslight Co.* (1914) 4 N. H. P. S. C. R. 337; *Federal Tel. & Tel. Co's Application*, (1914) N. Y. 2d Dist. 36 A. T. & T. Co. Com. L. 291; *Fuhrmann v. Buffalo General*

Electric Co. (1913) 3 P. S. C. R. (2d Dist. N. Y.) 739; Re Liability of Teleph. Subscribers (1913; Ohio) 27 A. T. & T. Co. Com. L. 96; Bailey v. Shawnee Gas & Electric Co. (1913; Okla.) 25 A. T. & T. Co. Com. L. 961; De Dodgeville Electric Light Co. (1914; Wis.) 28 A. T. & T. Co. Com. L. 703; Re Janesville Water Co. (1913) 13 Wis. R. C. R. 29; Re Kenosha Electric R. Co. v. Kenosha Gas & Electric Co. (1911) 8 Wis. R. C. R. 119; Re Interurban Tel. Co. (1911) 6 Wis. R. C. R. 647; Re Elva Farmers' Tel. Co. (1911) 6 Wis. R. C. R. 211; Berend v. Wisconsin Tel. Co. (1909) 4 Wis. R. C. R. 150.

In the following cases the Commissions, in prescribing new rates, left out the discount feature, although the superseded rates had contained provisions for discounts:

Solari v. Tuolumne County Electric Power & Light Co. (1913) 3 Cal. R. C. R. 188; Re Republican Valley Tel. Co. (1909) 2 Neb. St. R. C. R. 161; Re Public Service Gas Co. (1912) 1 N. J. P. U. C. R. 433.

In *Re Red Owl Tel. & Electric Co.* (1914; S. D.) 33 A. T. & T. Co. Com. L. 821, 822, it was said: "In several cases this Commission has decided that where a telephone company desires, in order to facilitate the collection of its telephone rentals, to offer a discount of a certain per cent or a certain number of cents from its monthly telephone rental, that the rate filed should be for the full telephone rental to be charged, with a statement or footnote to the effect that in case the rent is paid in advance, or on or before a certain date, to be named, that a discount of so many cents would be allowed from the monthly rental. This practice seems to be fully in accord with the practice of other Commissions having the regulation of the telephone business, and is, in our opinion, good telephone practice."

In the following further cases rates which offered a discount to induce payment in advance of performance of service were approved:

Guglielmetti Tel. Co. v. Chileno Valley Tel. Co. (1914; Cal.) 36 A. T. & T. Co. Com. L. 203; Columbus v. Southern Bell Tel. & Tel. Co. (1912; Ga.) 3 A. T. & T. Co. C. T. C. 380; Re People's Home Tel. Co. (1914; Ill.) 32 A. T. & T. Co. Com. L. 330; Re Henry Tel. Co. (1914; Ill.) 32 A. T. & T. Co. Com. L. 315; Re Mt. Auburn Tel. Co. (1914; Ill.) 30 A. T. & T. Co. Com. L. 1197; Re Corruna Tel. Co. (1914; Ind.) 35 A. T. & T. Co. Com. L. 88; Re Dickson, Proprietor of the Kimeo Teleph. System (1914; Kan.) 34 A. T. & T. Co. Com. L. 1029; Ex parte Cumberland Tel. & Tel. Co. (1910) 12 La. R. C. R. 127; Ex parte New Orleans Bd. of Trade & Cumberland Tel. & Tel. Co. (1908) 10 La. R. C. R. 53; Railroad Commission v. Cumberland Tel. & Tel. Co. (1902) 4 La. R. C. R. 55; Re Citizens' Tel. Co. (1914; Mich.) 33 A. T. & T. Co. Com. L. 754; Siple v. Davison Tel. Co. (1912; Mich.) 3 A. T. &

T. Co. C. T. C. 895; Re Antelope Mut. Tel. Co. (1914; Neb.) 35 A. T. & T. Co. Com. L. 105; Re Hershey Tel. Co. (1914; Neb.) 29 A. T. & T. Co. Com. L. 891; Re Madison Tel. Co. & Madison County Farmers' Tel. Co. (1911; Neb.) 3 A. T. & T. Co. C. T. C. 1058; Re Hastings Independent Tel. Co. (1911) 3 Neb. St. R. C. R. 229; Re Diller Tel. Co. (1911; Neb.) 3 A. T. & T. Co. C. T. C. 1031; Re Albion Tel. Co. (1910) 3 Neb. St. R. C. R. 209; Re Camp Dewey Tel. System (1910) 3 Neb. St. R. C. R. 224; Re Republican Valley Tel. Co. (1909) 2 Neb. St. R. C. R. 157; Re Home Tel. Co. (1913) 7th Ann. Rep. Or. R. Com. 122; Re Dakota Central Tel. Co. (1913; S. D.) 21 A. T. & T. Co. Com. L. 622; Re Wessington Springs Tel. Co. (1913; S. D.) 24 A. T. & T. Co. Com. L. 458; Re Agreement between Albemarle Tel. Co. & Scotsville Tel. Co. (1911; Va.) IV A. T. & T. Co. C. T. C. 243; Re Norwalk Independent Tel. Co. (1914; Wis.) 36 A. T. & T. Co. Com. L. 344; Re Elewa Farmers Tel. Co. (1914; Wis.) 33 A. T. & T. Co. Com. L. 838; Re Broadhead Tel. Co. (1912) 9 Wis. R. C. R. 383; Re Random Lake Tel. Co. (1912) 11 Wis. R. C. R. 130; Re Plymouth Tel. Exch. (1912) 9 Wis. R. C. R. 169; Re People's Tel. Co. (1911) 8 Wis. R. C. R. 92; Re Pewaukee-Sussex Tel. Co. (1911) 7 Wis. R. C. R. 465; Re Brooklyn Tel. Co. (1911) 6 Wis. R. C. R. 573.

In *Re Lincoln Tel. & Tel. Co.* (1914; Neb.) 33 A. T. & T. Co. Com. L. 780, the following schedule was approved: "City bills are payable monthly in advance at the company's office. Farm bills are payable quarterly in advance at the company's office. The difference between gross and net rates will be allowed as a discount for prompt payment. The discount on monthly bills shall be allowed if payment is made at the company's office on or before the 10th day of the month for which the bill is rendered. The discount on quarterly bills shall be allowed if payment is made at the company's office during the first month of the quarter. No discount should be allowed if any balance for previous service rendered remains unpaid."

In the following further cases, rates which provided that bills were payable in advance of service, and offering discounts for payment within a specified time thereafter, were approved:

Re Chatlin Phone, Light & Garage Co. (1914; Kan.) 29 A. T. & T. Co. Com. L. 796; *Jones v. Cass County Home Tel. Co.* (1912; Mich.) 9 A. T. & T. Co. Com. L. 14; *Re Lincoln Tel. & Tel. Co.* (1914; Neb.) 32 A. T. & T. Co. Com. L. 447; *Re Lincoln Tel. & Tel. Co.* (1913; Neb.) 22 A. T. & T. Co. Com. L. 898; *Re Ashville Tel. & Tel. Co.* (1909) 11 N. C. C. C. R. 244; *Re Nebraska Tel. Co.* (1913; S. D.) 21 A. T. & T. Co. Com. L. 620; *Re Cascade Tel. Co.* (1914; Wis.) 34 A. T. & T. Co. Com. L. 1121.

In *Re Blakely Tel. Co. & Southern Bell Tel. & Tel. Co.* (1913; Ga.) 20 A. T. & T. Co. Com. L. 325, 326, the following was approved:

"Provided that until 150 stations are connected with each of said local exchanges, a discount of 50 cents per month per station shall be allowed from the above schedule of rates, to be paid on or before 10th day of month in which due."

The following further cases approved rates which provided that discounts should be allowed for the prompt payment of bills until a specified number of subscribers were obtained:

Re Agreement between Southern Bell Tel. & Tel. Co. and Orangeburg (1914; S. C.), 31 A. T. & T. Co. Com. L. 95; Re Agreement Between Southern Bell Tel. & Tel. Co. and Darlington (1914; S. C.), 32 A. T. & T. Co. Com. L. 505; Re Agreement between Southern Bell Tel. & Tel. Co. and Dillon (1913; S. C.), 21 A. T. & T. Co. Com. L. 602; Re Agreement Between Southern Bell Tel. & Tel. Co. and Florence (1912; S. C.), 4 A. T. & T. Co. C. T. C. 39.

As a reverse to the rate which offers a discount for prompt payment, some rates prescribe an increased charge as a penalty for failure to pay within a specified time.

In *Re Fowler Independent Tel. Co.* (1913) 3 Cal. R. C. R. 1173, 1177, Commissioner Thelen in his report said: "With reference to rates which are made subject to reductions for payments of bills by any specified date, this Commission has heretofore taken the position that while this practice should not be entirely condemned, the discount should not be so large that it can be used as a revenue producing device, as might be the case if subscribers should fail to pay before the specified date. It is my opinion that such practice should be allowed, if at all, only as an inducement for the payment of accounts to reduce the cost of making collections, and should be applied in the form of an additional charge for nonpayment, rather than a discount for prompt payment, and I shall recommend that this practice be discontinued."

And in *State ex rel. Latshaw v. Water & Light Comrs.* 105 Minn. 472, 127 Am. St. Rep. 581, 117 N. W. 827, it was held that the defendant had a right to charge a penalty for nonpayment on a certain date, providing the penalty was not excessive and unreasonable, and that there is no difference in effect between charging \$1.20 per month, with a discount of 20 cents, if paid on or before the 1st day of the month, than charging \$1 per month, if paid on or before the 1st day of the month and 20 per cent penalty if not paid on that date.

Other cases approving such penalty rates are:

Re *Pacific Tel. & Tel. Co. & Louis Evans* (1913) 2 Cal. R. C. R. 1075; Rate Resolution No. 9 of Board of Public Utilities (1913), 20 A. T. & T. Co. Com. L. 314; Re *Murray, Doing Business under Name Pocatello Water Co.* (1914; Idaho) 30 A. T. & T. Co. Com. L. 1347; *Smith v. Cass County Home Tel. Co.* (1913; Mich.) 16 A. T. & T. Co. Com. L. 446; Re *Right of Teleph. Co. to Charge a*

Penalty for Failure to Pay Bills in Specified Time (1914; Ohio) 28 A. T. & T. Co. Com. L. 480; Re Union City Light Co. & Union City, Ohio, Electric Co. (1914; Ohio) 28 A. T. & T. Co. Com. L. 647; Maw v. Grant County Tel. Co. 1913 Ann. Rep. S. D. R. Com. 67; Re Badger State Tel. & Tel. Co. (1914; Wis.) 31 A. T. & T. Co. Com. L. 139; Re Ettrick Tel. Co. (1914; Wis.) 31 A. T. & T. Co. Com. L. 153; Re Troy & H. C. Tel. Co. (1914; Wis.) 29 A. T. & T. Co. Com. L. 1930; Re Farmers' Tel. Co. (1914; Wis.) 27 A. T. & T. Co. Com. L. 168; Re People's Tel. Co. (1913) 11 Wis. R. C. R. 499; Re Evansville Tel. Exch. (1911) 6 Wis. R. C. R. 639; Berend v. Wisconsin Tel. Co. (1909) 4 Wis. R. C. R. 150; Tacoma Hotel Co. v. Tacoma Light & Water Co. 3 Wash. 316, 14 L.R.A. 669, 28 Am. St. Rep. 35, 28 Pac. 516; Dayton v. Quigley, 29 N. J. Eq. 77.

OHIO PUBLIC UTILITIES COMMISSION.

N. B. NABER

v.

NORFOLK & WESTERN RAILWAY COMPANY AND THE
PITTSBURGH, CINCINNATI, CHICAGO, & ST. LOUIS
RAILWAY COMPANY.

[No. 285.]

Rates — Discrimination — Higher charge for shorter distance.

Railroad companies were ordered to refund to a shipper the difference between a rate that had been collected on a shipment of oak lumber and a lesser rate of the same companies which was in effect at the time, upon the same commodity, for a greater distance, over the same route and in the same direction.

[January 15, 1915.]

SUBMISSION under the provisions of the General Code of Ohio; order directing railroad companies to refund overcharge on freight.

ORDER.

By the **Commission**: This case is submitted under the provisions of §§ 579-580 of the General Code of Ohio, as amended May 9, 1910, Ohio Laws, vol. 101, page 173.

The petition, with complainant's exhibits, was filed July 14, 1914; the separate answer of defendant the Pittsburgh, Cincinnati, Chicago, & St. Louis Railway Company was filed August P.U.R.'15A.—31.

26, 1914, and complainant's reply thereto on August 27, 1914: and the separate answer of the defendant the Norfolk & Western Railway Company was filed August 6, 1914, and complainant's reply thereto on December 19, 1914. Upon examination of the pleadings, the affidavits, and exhibits, the Commission finds:

That N. B. Naber, the complainant, shipped oak lumber by defendants' lines of railroad from Lawshe, Ohio, to Dayton, Ohio, *via* Clare, Ohio, as follows:

Date 1911	Car Initial and Number.	Transferred Into	Weight Rate	Charge.
Sept. 21	N.&W. 25,814	N.&W. 62,427	50,700 @ 9¢ per 100 lbs.	\$45.63
Oct. 10	C.&R.I. 366		55,600 @ 9¢ per 100 lbs.	50.04
Nov. 4	B.&O. 91,265		37,500 @ 9¢ per 100 lbs.	33.75
Nov. 4	N.&W. 26,531		43,000 @ 9¢ per 100 lbs.	38.70
1912				
Jan. 2	I.C. 13,722		45,300 @ 9¢ per 100 lbs.	40.77
Feb. 17	N.&W. 27,383		65,700 @ 9¢ per 100 lbs.	59.13
Feb. 19	N.&W. 27,000		39,000 @ 9¢ per 100 lbs.	35.10
Feb. 19	N.&W. 26,985		40,300 @ 9¢ per 100 lbs.	36.27
Totals	8 Cars		377,100 @ 9¢ per 100 lbs.	\$339.39

That complainant filed his claim against said defendant companies for \$37.71, the amount of the alleged overcharge in freight, on the 23d day of May, 1913, and that said claim was rejected by defendants after more than sixty days had elapsed from the time that said claim was so filed;

That defendants' tariffs carried a rate of 9 cents per 100 pounds on oak lumber from Lawshe to Dayton, and that defendants applied and collected from complainant said rate of 9 cents per 100 pounds on all of said shipments;

That defendants' tariffs, duly filed with this Commission, carried and there was in effect at the time said shipments moved a rate of 8 cents per 100 pounds on oak lumber, applying from Portsmouth, Ohio, a point on the said Norfolk & Western Railway Company, to Dayton, Ohio, a point on said the Pittsburgh, Cincinnati, Chicago, & St. Louis Railway Company;

That Lawshe is a shipping point on the said Norfolk & Western Railway Company, located between Portsmouth, Ohio, and Dayton, Ohio, and is directly intermediate to said Portsmouth and Dayton;

That the rate of 8 cents per 100 pounds carried in defendants' said tariff, applying from Portsmouth to Dayton by defendants'

lines *via* Clare, Ohio, is the rate legally applicable to said shipments of oak lumber;

That the said rate of 9 cents per 100 pounds could not legally be applied to said shipments;

That by reason of defendants applying said rate of 9 cents per 100 pounds to said shipments, complainant was charged a greater rate for a shorter distance by the same route, and in the same direction, than was applicable for a greater distance by the same route and in the same direction and on the same commodity;

That the difference between the rate that was legally applicable and the rate that was applied on said shipments and collected from complainant is \$37.71, and that defendants overcharged complainant the said sum of \$37.71 on said shipments.

The Commission, therefore, further finds that there is due complainant, N. B. Naber, from said defendants, the Norfolk & Western Railway Company and the Pittsburgh, Cincinnati, Chicago, & St. Louis Railway Company, the sum of \$37.71.

The Commission further finds that the complainant, N. B. Naber, is a resident of Montgomery county, Ohio, and that the defendant the Pittsburgh, Cincinnati, Chicago, & St. Louis Railway Company has and maintains an office in Dayton, Montgomery county, Ohio, and it is ordered that the findings of the Commission in this matter be certified to the clerk of the court of common pleas of Montgomery county, Ohio.

We, O. H. Hughes, C. C. Marshall, and E. W. Doty, constituting The Public Utilities Commission of Ohio, do hereby certify the foregoing to be the findings of the Public Utilities Commission of Ohio in the above-entitled matter, as shown by the records and files of said Commission.

O. H. Hughes, Chairman, C. C. Marshall, E. W. Doty, Commissioners.

OHIO PUBLIC UTILITIES COMMISSION.

IN RE SWANTON HOME TELEPHONE COMPANY.

[No. 297.]

Security issues — Expenditures for capital account — Dividends.

A telephone company, upon petitioning for authority to issue \$9,250

of its common capital stock, and to distribute the same among its stockholders in lieu of money which had been expended from income account upon additions and improvements, was authorized to issue and sell \$1,600 of its common capital stock at not less than par for the purpose of reimbursing its income account for such expenditures of this nature as had been made within five years next preceding the filing of the petition, and was further authorized to distribute the fund so arising as a dividend on its outstanding stock.

[January 22, 1915.]

PETITION for authority to issue stock ; granted in part.

By the **Commission**: The Swanton Home Telephone Company, a corporation duly organized and existing under and by virtue of the laws of the state of Ohio, with its office and principal place of business at Swanton, Ohio, having, on the 28th day of July, 1914, filed its petition praying for the consent and authority of the Public Utilities Commission of Ohio to the issue by said the Swanton Home Telephone Company of its common capital stock of the total par value of \$9,250, such common capital stock to be distributed, *pro rata*, among the stockholders of said the Swanton Home Telephone Company, instead and in lieu of moneys actually expended from said company's income account for the construction of additions, extensions, improvements, and betterments to the plant and system of said the Swanton Home Telephone Company, which said moneys such stockholders might otherwise have received in dividends as a return upon their said investments in the securities of said corporation, as fully set out in said petition, and the time for hearing said matter having been fixed for Wednesday, August 5, 1914, at 10 o'clock A. M., and due notice of the time and place of said hearing having been given, and having been heard on said day and the further consideration thereof continued from day to day, the same came on this day for final consideration upon the petition, the evidence, and exhibits.

After considering the pleadings, hearing the evidence, and examining the exhibits, and being fully advised in the premises, and it appearing that the proceeds of said common capital stock will be devoted to and used for the reimbursement of the treasury of said the Swanton Home Telephone Company for moneys actually expended therefrom, within the period of five years next

preceding the date of the filing of the petition herein, for the construction of additions, extensions, improvements, and betterments to the plant and system of said the Swanton Home Telephone Company, the Commission is satisfied that its consent and authority should be granted to the issue and sale, by said the Swanton Home Telephone Company, of its common capital stock of the par value of \$1,600. It is therefore

Ordered that said the Swanton Home Telephone Company be, and it is hereby, authorized to issue its common capital stock of the total par value of \$1,600, and that said common capital stock be sold for the highest price obtainable, but for not less than the par value thereof, it being the opinion and finding of the Commission that the money to be secured by the issue of said common capital stock is reasonably required for the proper purposes of said corporation. It is further

Ordered that the proceeds arising from the sale of said common capital stock be, by said the Swanton Home Telephone Company, devoted to and used for the reimbursement of its treasury for moneys actually expended from income during the period of five years next proceeding the date of the filing of the petition herein, for the construction of additions, extensions, improvements, and betterments to petitioner's plant and system, as more fully set out in a detailed statement filed herein as an exhibit on the 7th day of August, 1914, which said exhibit is hereby made a part of this order by reference, nor shall said proceeds of such common capital stock be used for any other purpose whatsoever. It is further

Ordered that the fund arising from the sale of said common capital stock herein authorized to be sold to reimburse the income account of said the Swanton Home Telephone Company may be by said the Swanton Home Telephone Company distributed to its stockholders as a dividend on its outstanding stock, if said company elect to make such distribution. It is further

Ordered that said the Swanton Home Telephone Company make verified report to this Commission as follows: Upon the issue and sale of said common capital stock, or any part thereof, the fact of such issue and sale, the terms and conditions of sale, and the amounts realized therefrom, which shall be the highest price obtainable, but which shall not be less than the par value

thereof; on or before the 15th day of April, 1915, for the period ending March 31, 1915, and thereafter at quarterly intervals, the disposition and use made of the proceeds of said common capital stock, setting forth in reasonable detail the purposes for which said proceeds have been expended, such reports to be made until all of said common capital stock herein authorized has been issued and disposed of and all the proceeds thereof expended pursuant to the terms and conditions of this order. It is further

Ordered that the consent and authority of this Commission to the issue by said the Swanton Home Telephone Company of its common capital stock of the par value of \$7,650 be and the same is hereby withheld, and that said petition, in so far as the same prays for the consent and authority of this Commission to the issue, by said the Swanton Home Telephone Company, of its common capital stock of the par value of \$7,650 be, and the same is hereby, dismissed.

The Public Utilities Commission of Ohio, O. H. Hughes, Chairman, C. C. Marshall, E. W. Doty, Commissioners.

OKLAHOMA CORPORATION COMMISSION.

I. N. TERRELL, OKLAHOMA CITY, Complainant,

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY AND
WICHITA FALLS & NORTHWESTERN RAILWAY COM-
PANY, Defendant.

[No. 2209.]

Service — Railroad — Fine for violation of order of Commission.

A railroad company was fined for violating an order of the Commission providing that shipments of the character in question should move 50 miles per day until reaching destination, allowing twelve hours at junction or divisional points and exempting legal holidays and Sundays, where it appeared that after allowing for relay and legal holidays, it took four days to handle the shipment a distance of 35 miles.

[February 6, 1915.]

INFORMATION against railway companies for violation of order of Commission; imposition of fine and costs.

Appearances: I. N. Terrell for the complainant; R. A. Klien-schmidt for the St. Louis & San Francisco Railroad Company; C. L. Fontaine for the Wichita Falls & Northwestern Railway Company.

OPINION AND ORDER.

By the **Commission**: The evidence shows that complainant in this case shipped some drilling tools from Morris on the "Frisco" railroad *via* Oklahoma City and Altus to Willow, Oklahoma, which destination is on the Wichita Falls & Northwestern Railway; that the "Frisco" railroad carried the shipment through on time prescribed by Commission's order No. 168, and same was turned over to the Wichita Falls & Northwestern Railway on the 25th day of November, 1914, and the goods were delivered at Willow on the 2d day of December, 1914, which took seven days for a distance of less than 50 miles. There was one relay at Mangum and two legal holidays included in this time, which would show under the order of the Commission that they took four days in handling this shipment a distance of 35 miles, which is in violation of Commission's order No. 168, which provides that all shipments of this nature shall move 50 miles per day until they reach destination, allowing twelve hours at junction or divisional points, and exempting legal holidays and Sundays.

It is therefore ordered that the Wichita Falls & Northwestern Railway Company be fined \$50 and costs for violation of Commission's order No. 168; the same to be paid within sixty days from this date.

Corporation Commission, J. E. Love, Chairman, A. P. Watson, Commissioners.

VIRGINIA STATE CORPORATION COMMISSION.

COMMONWEALTH OF VIRGINIA AT THE RELATION OF
THE CITY OF RICHMOND*v.*THE CHESAPEAKE & OHIO RAILWAY COMPANY AND
OTHERS. [No. 441.]

Commonwealth of Virginia at the Relation of the City of Petersburg*v.*

Atlantic Coast Line Railroad Company and Others. [No. 438.]

Commonwealth of Virginia at the Relation of the City of Petersburg*v.*

Seaboard Air Line Railway and Others. [No. 439.]

Commonwealth of Virginia at the Relation of the City of Richmond*v.*Richmond & Chesapeake Bay Railway Company and Others.
[No. 440.]

Commonwealth of Virginia at the Relation of the City of Richmond*v.*Richmond & Rappahannock River Railway Company and Others.
[No. 442.]

Commonwealth of Virginia at the Relation of the City of Richmond*v.*

Southern Railway Company and Others. [No. 443.]

Commonwealth of Virginia at the Relation of the City of Richmond*v.*Richmond, Fredericksburg, & Potomac Railroad Company and
Others. [No. 444.]

Commonwealth of Virginia at the Relation of the City of Richmond*v.*

Virginia Railway & Power Company and Others. [No. 445.]

Constitutional law — Title of statute.

The fact that the subject, and not the object, of a statute is stated in the title, does not render it defective under the Virginia Constitution, prescribing that no law shall embrace more than one object, which shall be expressed in the title.

Statutes — Validity — Amendment of repealed act.

An act purporting to amend a statute that has been repealed is not void on the theory that there was no law in existence which could be amended, where, if fairly construed, the amendatory act is a complete statute in itself, and where by the ordinary rules of construction its meaning can be ascertained.

Statutes — Unconstitutional act — Amendment.

An unconstitutional act may be amended.

Taxation — Rolling stock — Situs — Local and state assessment.

A statute apportioning the value of the rolling stock of railroads among the counties, cities, towns, and school districts of a state for the purpose of local taxation, and fixing the situs therein to the extent of such apportioned value, does not violate a constitutional provision requiring, in effect, that personal property in municipalities be assessed for the purpose of local taxation at the same value it is assessed for state taxation.

Municipalities — Taxation — Suspension powers.

A statute apportioning the value of the rolling stock of railroads among the various counties, cities, towns, and school districts of a state for the purpose of local taxation, and fixing the situs therein to the extent of such apportioned value, cannot be construed as surrendering or suspending the powers of any municipality to tax corporations or corporate property in violation of the Virginia Constitution.

Taxation — Situs — Rolling stock — Legislative powers.

The legislature may fix the situs of the rolling stock of electric and street railroad corporations for taxation, where the lines of such railroads run into and through adjacent counties and into other cities and towns than the city in which the principal office of the corporation happens to be located, as under such circumstances the rolling stock has no actual bona fide situs in the city of the principal office.

Constitutional law — Impairment of obligation of contracts.

A city and a street railway company cannot so contract with each other as to prevent the state legislature from exercising its constitutional powers of taxation for the entire state.

Taxation — Situs — Legislative power.

The state has the right to change the common-law situs of rolling stock for taxation, and there is nothing in the Virginia Constitution which limits the power of the legislature to do so.

Constitutional law — Taxation — Rolling stock of railroad corporations.

The Virginia legislature, by the act of March 18, 1914, entitled, "An Act to Amend and Re-enact an Act Entitled 'An Act in Relation to the Assessment for Local Taxation, of the Rolling Stock of Railroad Corporations, Approved March 12, 1912,'" exercised its power to fix the

situs of rolling stock for taxation, in a constitutional way, and the act is therefore effective.

[January 21, 1915.]

IN the matter of the taxation of the rolling stock of railroad corporations, demurrers of railroads sustained to petitions of cities of Richmond and Petersburg attacking validity of act under which rolling stock of corporations was taxed.

Prentis, Chairman: A majority of this Commission declared the rolling-stock act of 1912 unconstitutional. State Corporation Commission Report, 1913, 78. The supreme court of appeals, on appeal from that decision, declared that it was repealed by the act of March 13, 1912. *Henrico County v. Petersburg*, 9 Va. App. 223. The general assembly at its 1914 session, Acts 1914, 218, and before the decision of the court had been announced, in response to an overwhelming public sentiment, and in the pursuit of its fixed purpose to change the method of assessing the rolling stock of railroads for local taxation, passed an act which reads as follows:

Chap. 135.—An Act to Amend and Re-enact an Act Entitled an Act in Relation to the Assessment, for Local Taxation, of the Rolling Stock of Railroad Corporations. Approved March 12, 1912. (H. B. 88.)

Became a law without the governor's approval March 18, 1914.

1. Be it enacted by the general assembly of Virginia, that an act entitled, "An Act in Relation to the Assessment, for Local Taxation, of the Rolling Stock of Railroad Corporations," approved March 12, 1912, be amended and re-enacted so as to read as follows:

The rolling stock of the various steam, electric, and street railroad corporations doing business in Virginia (whether operated by steam or other motive power), so far as the same is taxable in this state, shall not be assessed for local taxation at the principal office of said corporation, but the value of said rolling stock, as ascertained and assessed by the State Corporation Commission for the purpose of state taxation, shall be divided, apportioned, and distributed (for the purpose of local taxation) among the several counties, cities, towns, and school

districts in this state, in and through which any part of any such railroad is located, in the ratio and proportion that the total assessed value of the right of way, roadbed, track, and all other property (except rolling stock) of such railroad corporations, respectively, located in any such county, city, town, or school district, bears to the assessed value of all such property (except rolling stock) of said railroad corporations, respectively; Provided, That foreign railroad corporations doing business in this state shall be assessed for taxation on the average amount of rolling stock habitually used by them in this state.

The State Corporation Commission shall annually, on or before the 15th day of October in each year, divide, apportion, and distribute, according to the ratio and proportion aforesaid, the assessed value of rolling stock of said railroad corporations, respectively, among the several counties, cities, towns, and school districts in and through which the line or roadway of any such railroad corporation is located, and certify to the board of supervisors of said counties, and to the councils of said cities and towns, respectively, the proportion of the assessed value of said rolling stock for local taxation by said counties, cities, towns, and school districts, respectively; and the proportion of the assessed value of said rolling stock which shall be subject to taxation for local purposes by the counties, cities, towns, and school districts, as aforesaid, shall be that part of said assessed value of said rolling stock certified by the State Corporation Commission to the respective boards of supervisors of the counties, and the councils of the cities and towns, as hereinbefore provided.

The said valuation of said rolling stock, when so ascertained and certified and apportioned, as aforesaid, shall be held to be situated for the purpose of local taxation in said cities, towns, counties, and districts, and taxable therein in the same way and manner as the physical properties of said railroad is taxed for the purpose of local taxation, as now provided by law; and said apportionment shall be treated in all respects, for the purpose of local taxation, as if said rolling stock was actually situated in said cities, towns, counties, or districts, and the situs, or place of taxation of such rolling stock, to the extent of said valuation and apportionment, shall be in the said cities, towns, counties,

and districts aforesaid, and not elsewhere; and shall be taxed in all respects as other property is taxed for local purposes in such cities, towns, counties, and districts through which said railroad passes, in whole or in part; and the councils of such cities and towns, and the boards of supervisors of the several counties in the state in which the said railroads are situated as aforesaid, shall be, and they are, hereby authorized to levy upon the value of said rolling stock, so ascertained and certified as aforesaid to said cities, towns, counties, and districts by the State Corporation Commission aforesaid, the same rate of local levies and taxation as is put and placed on the physical properties of such railroads situated in said cities, towns, counties, and districts for local purposes.

And the several railroad corporations shall pay over to the treasurers of the respective counties, and to the treasurers of the respective cities and towns, the taxes to which they shall be respectively entitled under such assessment, at the same time and in the same manner as taxes levied on the other properties of such corporations for local purposes are required to be paid.

All acts and parts of acts in conflict herewith are hereby repealed.

This act shall be in force from and after the 25th day of June, 1914.

By authority of this act the Commission in 1914 assessed and distributed the value of the rolling stock, and certified such assessments to the various local authorities as thereby directed.

After this was completely done the act was attacked by the city of Richmond and the city of Petersburg, before this Commission, in these proceedings:—

First. It is claimed that the title is defective in that it violates § 52 of article 4 of the Constitution of Virginia, prescribing that “no law shall embrace more than one object, which shall be expressed in its title.” It is said that this statute does not state its object; that while the subject is stated, that the object is not. Some authority is cited for making this distinction. We believe, however, that these authorities are not supported by reason, are unsound, and are not controlling; and that the great weight of authority supports the proposition that, as used in this

constitutional provision, the words, "subject" and "object," should be construed as having the same purpose in view, and mean substantially the same thing. *Cooley, Const. Lim.* 170. The purpose of the constitutional inhibition is well understood. In *Com. v. Willcox*, 111 Va. 856, 69 S. E. 1027, the doctrine is thus restated by Keith, President: "The construction of the constitutional provision, that no law shall embrace more than one object, which shall be expressed in its title, was before this court in the case of *Com. v. Brown*, 91 Va. 762, 28 L.R.A. 110, 21 S. E. 357. The unanimous opinion of the court was written by Judge Riely, and the conclusion reached was that the title of an act will be sufficient, within the meaning of the Constitution, if the things authorized to be done, though of a diverse nature, may be fairly regarded as in furtherance of the object expressed in the title. All that is required is that the subjects embraced in the statute, but not specified in the title, be congruous and have natural connection with or be germane to the subject expressed in the title. And the Constitution is to be liberally construed so as to uphold the law, if practicable. It was claimed in that case that the body of the statute embraced many objects, instead of one; that it amended and repealed many sections of the Code; that the independent sections had various objects; and that the title should have stated and shown what subject each section as amended and re-enacted had reference to, what subject each section repealed had reference to, and that the subject-matter in the independent sections should have been clearly set forth in the title. Judge Riely, in his opinion, says: 'The provision of the Constitution is a wise and wholesome one. Its purpose is apparent. It was to prevent the members of the legislature and the people from being misled by the title of a law. It was intended to prevent the use of deceptive titles as a cover for vicious legislation, to prevent the practice of bringing together into one bill for corrupt purposes subjects diverse and dissimilar in their nature, and having no necessary connection with each other; and to prevent surprise or fraud in legislation by means of provisions in bills of which the titles gave no intimation. On the other hand, it was not intended to obstruct honest legislation, or to prevent the incorporation into a single act of the entire statutory law upon one general subject. It was

not designed to embarrass legislation by compelling the multiplication of laws by the passage of separate acts on a single subject. Although the act or statute authorizes many things of a diverse nature to be done, the title will be sufficient if the things authorized may be fairly regarded as in furtherance of the object expressed in the title.' In *Ingles v. Straus*, 91 Va. 209, 21 S. E. 490, Judge Cardwell, speaking for the court, maintains the identical principle that 'if the subjects embraced by the statute, but not specified in the title, have congruity or natural connection with the subject stated in the title, or are cognate or germane thereto, the requirement of the Constitution as to the title is satisfied;' and quotes with approval the case of *Johnson v. Harrison*, 47 Minn. 575, 28 Am. St. Rep. 382, 50 N. W. 923, where it is said that 'all that is required is that the act should not include legislation so incongruous that it could not, by any fair intendment, be considered germane to one general subject. The subject may be as comprehensive as the legislature chooses to make it, provided it constitutes, in the constitutional sense, a single subject, and not several. The connection or relationship of several matters, such as will render them germane to one subject and to each other, can be of various kinds; as, for example, of means to ends, of different subdivisions of the same subject, or that all are designed for the same purpose, or that both are designated by the same term. Neither is it necessary that the connection or relationship should be logical. It is enough that the matters are connected with and related to a single subject in popular signification. The generality of the title of an act is no objection, provided only it is sufficient to give notice of the general subject of the proposed legislation and of the interests likely to be affected. The fact that the act authorizes many things of a diverse nature to be done will not affect the sufficiency of the title, provided the doing of such things may be fairly regarded as in furtherance of the general subject of the enactment.' *Ingles v. Straus*, *supra*. See also *Lacey v. Palmer*, 93 Va. 159, 31 L.R.A. 822, 57 Am. St. Rep. 795, 24 S. E. 930, to the same effect. The case of *Com. v. Brown*, *supra*, was the subject of annotation and criticism by that eminent jurist, Judge Burks, in 1 Va. L. Reg. at p. 118, where the conclusion reached was warmly commended; and that line of decisions has been ap-

proved by time, the most just, as well as the most severe, of all critics."

It is well settled that while the provision is mandatory it should be construed liberally, and not so as to defeat legislation by verbal refinements upon doubtful questions.

The effort to distinguish between the words, "subject" and "object," as used in similar constitutional provisions, was evidently under consideration by the supreme court of appeals of Virginia in the case of *Ingles v. Straus*, 91 Va. 215, 21 S. E. 490, and *Cardwell*, Judge, disposes of it in this language: "A similar provision to this is found in the Constitutions of most of the states of the Union, and has been construed in a large number of cases, and by many courts of last resort, both state and Federal, and the authorities that will be cited here will be the cases arising in those states having a similar constitutional provision,—the words, 'object' and 'subject,' being taken to have one and the same signification."

Again, in *Cook v. Skeen*, 109 Va. 11, 63 S. E. 11, Judge *Cardwell* says this: "Section 52 of the present Constitution is identical with § 15 of the former Constitution, and in the case of *Ingles v. Straus*, 91 Va. 209, 21 S. E. 490, practically the same question here presented was considered and determined. It was there held that if the subjects embraced in the act, but not specified in the title, have congruity or natural connection with the subject stated in the title, or are cognate or germane thereto, the requirement of the Constitution, that 'no law shall embrace more than one subject, which shall be expressed in its title,' is satisfied."

The authorities could be multiplied almost indefinitely, establishing the same general doctrine.

We believe that inasmuch as it is undisputed that the subject of this legislation is plainly indicated in its title, that these two cases are decisive of the question here raised.

Whether the word "subject" is used, or the word "object," the underlying purpose is the same, and the commonly accepted meaning of the words should control the courts.

That our own court uses the words interchangeably as having the same meaning is apparent from the most casual examination of the decision.

The plainly indicated purpose of the act here involved is to change the law with reference to the assessment of the rolling stock of railroad corporations for taxation, otherwise why enact any law? Courts, as well as everybody else, take notice of matters of common knowledge, and it is certainly a matter of common knowledge in Virginia that for many years, before the legislature, in the courts, and in the newspapers, there have been discussions of the proposition to change the situs of the rolling stock of railroads for taxation, and a recognition of the public demand to change the common-law situs of rolling stock for taxation. Bearing this in mind, it seems to us that there can be no doubt that the title of this act gives sufficient notice to all interested of its object; namely, to enact a statute changing the existing common-law rule. The title states it to be a law relating to the assessment, for local taxation, of the rolling stock of railroad corporations. The subject of it, therefore, as plainly expressed, is the assessment of the rolling stock, and the object, equally well indicated, is that local taxes may be levied thereon. The assessment of property for taxation necessarily involves its situs. There is a single object, that is, the securing of local taxes; and as a preliminary to the attainment of that object there must be an assessment, and a necessary incident to assessment is the fixing of the situs. All of these things are fairly included in the general language of the title, and are aptly expressed by the words of the statute. The statute does not levy any local or other taxes. That part of the statute which authorizes the local authorities to levy taxes upon the value of the rolling stock so ascertained and certified to them puts emphasis upon the purpose and object of the statute. It does not change any existing law. It does not amend § 833 of the Code, which is the section authorizing the boards of supervisors to levy local taxes upon property within the county. The situs of the rolling stock, by the act, having been fixed in the various counties, cities, towns, and districts, the local authorities were, by other laws, already authorized to levy and collect taxes thereon. If it be admitted that the title is not broad enough to cover this part of the statute, then it may be treated as surplusage, and does not make void such part of the statute as is fairly included within the title.

This act, by providing for the assessment and location of the property, makes possible its ultimate object; that is, the levying and collection of local taxes from the owners of the property. To have changed the situs without providing for an assessment at such situs would have been vain, and to have provided for the assessment without fixing the situs would have left the common-law rule in effect. Had the title merely referred to the changing of the situs, it would have been suggested that it was too narrow to include its assessment, but by referring to its assessment for local taxation it necessarily included the fixing of its situs: for the situs of personal property must be fixed in the locality, as the basis for taxation, by the authorities of that locality.

That these petitioners must have thought the title to this act sufficient when the proceeding was instituted is plainly indicated by the fact that this ground of invalidity was not alleged in the original petitions, and was only introduced by amendments to the petitions made at the time the proceeding was heard.

If there be a fair doubt that the single subject, object, and purpose of the statute is sufficiently expressed in the title, to conform fully with the constitutional requirement, it is well settled that such doubt should be determined in favor of the statute. We have, however, no doubt whatever of the sufficiency of the title.

Second. The second ground of attack is that inasmuch as the court of appeals has declared that the act of 1912 has been repealed by the act approved March 13, 1912, therefore that there was no law in existence which could be amended.

It will be noted that in the decision of this Commission hereinbefore referred to, it was stated that nothing said in that opinion should be construed as questioning the constitutionality of the act of 1912 so far as it referred to the rolling stock of electric railways, and that the part of the act referring to the change of situs for taxation of the rolling stock of electric railways had not been questioned. The fact is that this part of the act was executed by the Commission, and the rolling stock of electric railways was assessed for taxation under the act of March 12, 1912, and the tax paid thereon. So that, while the opinion of the court of appeals, in general terms, states that the act of March 12, 1912, had been repealed, at the same time it is perfectly

apparent from the record that they were not considering the act except so far as it referred to the rolling stock of the steam railroads, because no other question was before them; and hence the court has not decided that the act of 1912 had been repealed so far as it changed the situs for taxation of the rolling stock of certain electric railways. Therefore, under the strictest application of the doctrine, the act could be amended.

We do not, however, think that the validity of the act of 1914, now under consideration, depends upon this fact. While certain authorities appear to sustain the proposition that an act which had been repealed cannot be amended, these authorities are against the decided weight of authority, and, in our opinion, are unsustained by reason.

The reference in the title of the act now in consideration to the former act may be treated as surplusage, and the act of 1914 is the latest expression of the legislative will, and if constitutional and complete in its terms it is the duty of the courts to give effect to the legislative will thus expressed. The case of *Whitlock v. Hawkins*, 105 Va. 242, 53 S. E. 401, is instructive, if not conclusive, on this point. There had been published in the official edition of the Acts of 1902-3-4 an act which it appeared upon investigation had never been passed by the general assembly in the mode prescribed by the Constitution. The act was therefore declared to be a nullity. At the session of 1906 the general assembly undertook to cure this null and void act by passing an act with this title: "An Act to Amend and Re-enact Chapter 23 of the Acts of Virginia in Relation to Assessments of Lands and Lots as the Same was Amended by Chapter 388 of the Acts of Assembly of 1902-3-4, Approved December 10, 1903, and to Validate Assessments and Other Acts Done under the Aforesaid Act of the Assembly."

Apparently the question here raised was not raised in that case, but the court decided the later act fully effective, though it was an act to amend and re-enact an act which had never been passed.

While there may be cases in which the amending act undertakes to amend a single section of an act having many sections and which had been repealed, which makes it impossible to correlate or co-ordinate the amending act with any existing law,

and thus the amending act must be pronounced void, still the underlying and true reason for this is not because it amends an act which had been repealed, but because the later act is meaningless. We believe that doctrine to be utterly unsound if the amending act, fairly construed, is a complete statute in itself which the legislature sees fit to re-enact. If, by the ordinary rules of construction, the meaning of the later act can be ascertained, it is and should be effective as the latest expression of the legislative will. *People ex rel. Henderson v. Onahan*, 170 Ill. 449, 48 N. E. 1007; *People ex rel. Strough v. County Canvassers*, 143 N. Y. 84, 37 N. E. 650; 36 Cyc. 1055.

Third. Closely related to the objection just considered is the allegation that the act of 1912 was unconstitutional, and, being unconstitutional, could not be amended. Upon the threshold of this proposition it may be asked, What more natural method of curing the defects of an unconstitutional law can be suggested than that the legislature should amend and re-enact it so as to remove the objections?

In the case of *Allison v. Corker*, 67 N. J. L. 596, 60 L.R.A. 564, 52 Atl. 362, this question was presented, and Collins, J., answered it thus: "It is argued that as the original statutes were void, they could not be amended. For the purposes of this case it may be conceded that the unconstitutional provisions referred to were inseparable from the legislative intent, so that in each case the entire statute was unconstitutional. The question raised therefore, is fairly presented. The argument is that an unconstitutional statute is a nullity. Granting this, it does not follow that it may not be imported into valid legislation by appropriate reference. It is entirely within the legislative power to give effect to documents without their full recital. . . . The matter is purely one of identification. Surely nothing can be more definite than a reference to a document that has been regularly promulgated as a public statute. In *Mortland v. State*, 52 N. J. L. 521, 20 Atl. 673, it was held by this court that a statute providing for election of chosen freeholders of a county from assembly districts created under previous legislation was valid, whether such districts could be constitutionally created or not. But I am prepared to go farther and hold that an unconstitutional statute is nevertheless a statute; that is, a legislative act.

Such a statute is commonly spoken of as void. I should prefer to call it unenforceable, because in conflict with a paramount law. If properly to be called void, it is only so with reference to claims based upon it. . . . The supreme court cannot set aside a statute as it can a municipal ordinance. It simply ignores statutes deemed unconstitutional. . . . An unconstitutional statute is not merely blank paper. The solemn act of the legislature is a fact to be reckoned with. Nowhere has power been vested to expunge or remove it from its proper place among statutes."

In the case of *State ex rel. Richards v. Cincinnati*, 52 Ohio St. 419, 27 L.R.A. 737, 40 N. E. 511, the validity of an amending or curative statute was questioned, because the original act was unconstitutional, and it could not, therefore be made valid by amendment, though the constitutional objection be thereby removed. The conclusion reached by the court, however, was that an unconstitutional statute may be amended into a constitutional one, so far as its future operation is concerned, by removing its objectionable provisions or supplying others to conform it to the requirements of the Constitution.

In *Columbia Wire Co. v. Boyce*, 44 C. C. A. 588, 104 Fed. 172, it is said by Woods, C. J.: "In the absence of constitutional restriction the reasonable rule would seem to be, as it has been several times declared, that an amendatory statute will be upheld, though it purport to amend a statute which has already been amended, or which was for any reason invalid,"—citing *Com. v. Kenneson*, 143 Mass. 418, 9 N. E. 761; *People ex rel. Jones v. Pritchard*, 21 Mich. 236; *State v. Brewster*, 39 Ohio St. 653; *Basnett v. Jacksonville*, 19 Fla. 664; *Greer v. State*, 22 Tex. 588; *State v. Warford*, 84 Ala. 15, 3 So. 911; *Blake v. Brackett*, 47 Me. 28.

We conclude, therefore, that if the act of 1912 is unconstitutional, the general assembly has taken the natural and proper way to remove the objection.

Fourth. It is alleged that the act of March 18, 1914, is a violation of § 128 of the Constitution, which reads as follows: "Sec. 128. In cities and towns the assessment of real estate and personal property, for the purpose of municipal taxation shall be the same as the assessment thereof for the purpose of state taxa-

tion, whenever there shall be a state assessment of such property,"—and is, therefore, null and void.

This objection appears to be based upon the assumption that the rolling stock is located for state taxation at the principal office of the company by virtue of § 27 of the tax bill. This assumption, however, appears to us to be utterly unsound. While § 27 of the tax bill requires the company to report the location of its real and personal property, it nowhere fixes the location of the rolling stock. By the common law the location of the rolling stock was fixed at the principal office of the company, but it cannot be seriously contended that the general assembly may not change the location of such movable property as rolling stock. All that § 128 of the Constitution does is to require that personal property located in such municipality shall be assessed for the purpose of municipal taxation at the same value as it is assessed for the purpose of state taxation, and this statute does not violate that section of the Constitution because the general assembly by the act of March 18, 1914, has located a part only of the rolling stock here involved in the city of Richmond. The assessment of such part thereof as is located in that city is the same for the purpose of state taxation as it is for the purpose of municipal taxation; and we find no warrant for the assumption upon which this objection is based; namely, that the location of any more of this property for state taxation is in the city of Richmond. We are of opinion that the location of the property for state taxation is in the various counties, cities, towns, and districts through which the lines of the railroad companies run, and that the situs for purposes of all taxation, state and local, is fixed by the last act referred to. Indeed the act itself states that "the situs, or place of taxation, of such rolling stock, to the extent of such valuation and apportionment, shall be in the said cities, towns, counties, and districts aforesaid, and not elsewhere."

Fifth. It is also alleged that the act of March 18, 1914, violates both the second paragraph of § 64 and § 183 of the Constitution. The portion of the second section of § 64 relied upon reads as follows: "No general or special law shall surrender or suspend the right and power of the state, or any political subdivision thereof, to tax corporations and corporate property, ex-

cept as authorized in article 13," and § 183 designates the property which shall be exempt from taxation, state and local.

It is said that the act of March 18, 1914, is unconstitutional in that it surrenders and suspends the right and power of the cities of Richmond and Petersburg to tax corporations and corporate property in a manner not authorized by article 13 of the Constitution, and, in effect, exempts from local taxation by the municipalities the greater part of the personal property belonging to the railroad corporations. We cannot accept the soundness of this suggestion. There is nothing in the rolling-stock act of 1914 which can be construed as surrendering or suspending the powers of any municipality to tax corporations or corporate property. On the contrary it expressly reserves to every municipality the right to tax corporate property; that is, such portion of the rolling stock of the railroads as is by the act located within such municipality. To admit the proposition is to admit that the legislature has not the right to change the situs of this class of property for local taxation. This proposition is not only not admitted, but is denied. It will be noted that under article 13, § 18, after January 1, 1913, the legislature is given express authority to change the system of taxing railroad corporations, which, of course, includes the method of taxing the rolling stock of railroad corporations.

Sixth. It is alleged that the rolling stock of electric and street railroad corporations has no actual bona fide situs in the city in which their principal offices are located. As to this it may be said that if the entire track of such electric railways is within the corporate limits of the city, then the situs of all the rolling stock of such a railroad remains within such city. The act does not affect the powers of the city to tax the rolling stock of such companies. If, however, the lines of such railways run into and through the adjacent counties, and into other cities and towns, then there is a conclusive presumption that it operates its rolling stock into and through such other counties, cities, and towns. This being a concession, it follows that the rolling stock of such company has no actual bona fide situs in the city in which its principal office happens to be located, but is used at its pleasure over its lines in and out of these cities, and because such rolling stock has no actual bona fide situs, but may be, and is, actually

used outside of the city, therefore the legislature may fix such situs for the purpose of taxation.

In the case at bar, under the statute now being considered, the legislature has apportioned the rolling stock, and under that apportionment if the city in which is the principal office has also located in it a large proportion of the lines and other property of the company, then a large proportion of the rolling stock is by the act located for taxation within such city.

That this apportionment of the unlocated property of the Virginia Railway & Power Company is not inequitable, so far as it affects the city of Richmond's right to tax its rolling stock, is indicated by the assessment and apportionment made by this Commission under the act of March 18, 1914. The total rolling stock of that company amounts to \$802,440. The total value of rolling stock apportioned to the city of Richmond, including the small amount to Barton heights, Ginter park, and Highland park—now part of the city—amounts to 52 plus per cent, or \$418,552. This company operates in the cities of Richmond, Norfolk, Petersburg, and Portsmouth, and in the counties of Chesterfield, Henrico, Dinwiddie, Prince George, and Norfolk, a total mileage of 138 plus. Of this mileage only about 41½ miles is in the city of Richmond, and yet, while it has less than 30 per cent of the mileage of the road, it receives under this apportionment over 50 per cent of the assessed value of its rolling stock for local taxation.

Until we are prepared to deny the legislature the right to give this class of property a legal situs for taxation, we cannot accept the soundness of the proposition contended for.

Seventh. Lastly, it is alleged that the act of March 18, 1914, violates § 10 of article 1 of the Constitution of the United States, prohibiting the impairment of contracts, and to sustain this allegation the petitioner alleges that by an ordinance adopted by the city of Richmond it is provided:

"That for the privilege of using the streets and alleys of the city for the laying therein of their tracks and the erection of poles and stringing of wires thereon, by any of the street railway companies now operating street car lines within the city of Richmond, other than the Richmond Traction Company, each and every such company for such privilege of so using and

occupying the streets of the city from and after the 1st day of January, 1900, shall pay annually to the treasurer of the city . . . the payment of which sums shall be in lieu of any and all license tax, but it is expressly stipulated that such payment shall not affect the liability of the said company or companies to general taxation at the rate assessed on the property of other persons within the city, which liability for general taxation is hereby expressly recognized. The assessment of the property of any such company to be made upon the valuation of its property located in the city of Richmond, as made by the board of public works (now State Corporation Commission) for purposes of state taxation, which valuation, however, shall include all of the rolling stock of such company, whether assessed by the board of public works (now State Corporation Commission) as located in the city or not, which shall likewise be liable to general taxation within the city."

Now, if it be possible for a city and a street railway company to so contract with each other as to prevent the legislature of the state from exercising its constitutional powers relating to questions of taxation for the entire state, then this proposition is sound. We cannot, however, admit that the city and the company possess any such restraining power. The right of taxation is a governmental power lodged with the general assembly, which creates the city, and this power of taxation is a continuing power. The contract, so far as it undertakes to control the legislature of Virginia in determining questions of general law applicable to the whole state, and so far as it undertakes to control or interfere with the local authorities of other municipalities, and with the boards of supervisors of the counties in levying taxes upon property legally located within such other cities and counties, is absolutely null and void. What the effect of such contracts may be as between the city of Richmond and the street railway companies entering into such contracts, it is unnecessary for us to discuss. The rights of the various counties and cities in which this rolling stock is located under the act of March 18, 1914, must be determined by that act, which, so far as it affects such other counties and cities, is superior to any such alleged contract. Such contracts made by a city are subordinate to the will of the legislature, and subject to nullification by the legis-

lature at any time. *Tippecanoe County v. Lucas*, 93 U. S. 108, 23 L. ed. 822; *Mt. Pleasant v. Beckwith*, 100 U. S. 525, 25 L. ed. 701; *New Orleans v. New Orleans Waterworks Co.* 142 U. S. 79, 35 L. ed. 943, 12 Sup. Ct. Rep. 142.

Eighth. The true determination of the questions here involved depends upon whether the state has the right to change the common-law situs of rolling stock for taxation. This question is disposed of by the Supreme Court of the United States in the case of *Taylor v. Secor*, 92 U. S. 575, 23 L. ed. 663, by Mr. Justice Miller in this language: "Another objection to the system of taxation by the state is that the rolling stock, capital stock, and franchise are personal property; and that this, with all other personal property, has a local situs at the principal place of business of the corporation, and can be taxed by no other county, city, or town but the one where it is so situated. This objection is based upon the general rule of law that personal property, as to its situs, follows the domicile of its owner. It may be doubted very reasonably whether such a rule can be applied to a railroad corporation as between the different localities embraced by its line of road. But, after all, the rule is merely the law of the state which recognizes it; and when it is called into operation as to property located in one state, and owned by a resident of another, it is a rule of comity in the former state, rather than an absolute principle in all cases. . . . Like all other laws of a state, it is therefore subject to legislative repeal, modification, or limitation; and when the legislature of Illinois declared that it should not prevail in assessing personal property of railroad companies for taxation, it simply exercised an ordinary function of legislation."

In the case of *Columbus Southern R. Co. v. Wright*, 151 U. S. 478, 38 L. ed. 242, 14 Sup. Ct. Rep. 396, Mr. Justice Jackson, in dealing with a similar question, says this: "The question is whether the railroad company has any constitutional right to have its transitory property assessed for taxation alone in Muscogee county, and whether the distribution, among the several counties, of such property, is such a discrimination against the railroad as denies to it the equal protection of the laws. This is hardly an open question. Various modes of taxing railroad property are adopted by the different states.

In some, railroad companies are taxed upon their property as a unit. In others, the road and the property in each county are separately assessed, and in still other states, the whole road is assessed, and then the assessment apportioned among the several counties and towns. These and all similar modes of taxation are subject to the legislative discretion of the respective states, and do not ordinarily present any Federal question whatever. But the mode of distribution of the unlocated or transitory personal property is a matter of regulation by the state legislature, which in no way involves a violation of the 14th Amendment."

This doctrine is well established, and many additional authorities could be cited.

There is nothing in the Virginia Constitution which limits the power of the legislature in this state to fix the situs of personal property not having an actual situs. The only question is whether the legislature, by the act of March 18, 1914, has exercised its power in a constitutional way. We are clearly of opinion that it has done so, and that the act is and must be made effective.

We will, therefore, sustain the demurrers to the petition.

Rhea and Wingfield, Commissioners, concur.

Note.—The subject of the situs for taxing purposes of tangible personal property of domestic corporations in the United States is treated in an exhaustive note to *Teagan Transp. Co. v. Board of Assessors*, 69 L.R.A. 431.

The cases dealing with the situs of railroad rolling stock are set out and discussed at pages 445 et seq. of that note.

WISCONSIN RAILROAD COMMISSION.

IN RE LONG LAKE IMPROVEMENT ASSOCIATION.

Waters — Prescriptive rights — Flowage privileges.

The fact that a majority of the lands bordering a lake used for storage purposes by a light and power company are burdened with flowage privileges does not impair the right of the remaining lands to protection from overflow.

Waters — Maximum and minimum levels for storage.

A light and power company was ordered to maintain the level of a lake used by it for the storage of water between certain maximum and minimum heights, a somewhat greater maximum level being permitted for a period of twenty-four hours in times of flood; it appearing that the maximum variation in levels so allowed would probably provide the company with sufficient storage capacity, and that the maintenance of such constant maximum and minimum levels would afford protection to the lands and structures bordering the lake.

[January 30, 1915.]

APPLICATION for order fixing maximum and minimum levels at which storage reservoir is to be maintained; granted.

The appearances are set out in the opinion.

By the Commission: The application in this matter was filed with the Commission on July 14, 1914. Hearings were held on August 6, 1914, and September 22, 1914. The former hearing was held in the town hall at Long Lake while the latter was held at Madison.

Appearances were Elmore T. Elver for the petitioner, and A. E. Pierce and Charles McPherson for the respondent.

This action was brought by residents on the borders of Long Lake in Washburn county, Wisconsin. In their testimony and their application they allege that the dam which is at present maintained at the foot of Long Lake by the Wisconsin-Minnesota Light & Power Company is so used by this company as to cause great variations in the level of that lake. As a result of this variation great damage has been done to the property of the applicant. Testimony was introduced to show that during periods of high water springs and boathouses along the border of the lake were flooded, while during periods of low water it was not possible for the boats to reach their landing places. Islands in the lake, it is claimed, are being eroded, due to the great variations in the level of the water, and as a consequence much desirable private land is being carried away. The scenic effects are also being destroyed by the constant raising and lowering of the lake level. Witnesses pointed out that fish spawn were being killed during the low stages of the water, due to the insufficient depth of the same. During periods of low water it was also claimed that marshes were created along the lake, which permitted of the breeding of mosquitos, and also

caused noxious odors to exist. Evidence was introduced to show that crops along the lake were destroyed due to flooding. The applicant, on the ground of the existence of these facts, asks that this Commission determine maximum and minimum levels for the lake, and direct that permanent bench marks be erected.

The owner of the dam through assignment, the present Wisconsin-Minnesota Light & Power Company, in its testimony denied a number of the allegations of the applicant, and stated that it had unreserved flowage rights to most of the land surrounding the lake. Prescriptive rights were also claimed for the flooding of all the other land around the lake because of the fact that this land had been flooded since the existence of the dam.

It appears from the testimony that Long Lake is used as a storage reservoir by the respondent in this case, so as to provide it with sufficient water for the operation of its power plants farther down the waterways. During periods of low water at the power plants the water from the lake is released, thus causing the low stages complained of. When additional water is not needed for the operation of these plants, the water is stored at Long Lake, with resulting increases in the lake level.

The evidence in this case clearly shows that the lands bordering Long Lake are being affected by the existence of the dam and the consequent raising and lowering of the water. The existence of prescriptive rights to flood the land upon which reserved rights to effect this result are not held is disputed by the applicant, and, in the absence of sufficient proof, we must presume that such rights do not exist. Where some lands bordering bodies of water are burdened with flowage rights while other lands are not, the latter parcels are entitled to protection from flooding, and the claim that the majority of the land is burdened with flowage privileges does not impair the right to such protection.

In the light of the above statement it is important that some protection be afforded the applicant.

At the hearing it was pointed out that the level of the lake at the time of the building of most of the bordering structures was about 18 inches below the existing level. It seems to be the

general opinion that the maximum limit should be placed at this point.

Our engineer made some observations as to the level of the lake at the time of the hearing. These observations were checked by the engineer for the complainants. The results of running levels showed that the reading at the gage board should have been 7.54 while the actual reading was 7.55. For all practical purposes either figure can be accepted as correct.

From the point of view of the applicant it is highly desirable that the level of the lake shall be as constant as is consistent with conditions. The respondent, however, desires sufficient storage capacity to provide water for its lighting and power business. In fulfilling the latter requirement our engineer states that it will not be very material at which height the maximum is placed when once the amount of variation is decided upon; *i. e.*, the amount of water which can be drawn off with a given permissible variation will be approximately the same at various maximum levels. It is highly desirable, on the other hand, that border structures now existing on the lake should be protected from flooding. From the testimony it would appear that at a maximum height of 6 feet at the gage board, such protection will be provided for. A maximum variation of 12 inches will probably afford to the respondent sufficient storage capacity for power purposes. In cases of flood it may be difficult to immediately reduce the level to the maximum permissible level. In such cases an additional variation of 3 inches for a limited period of time might reasonably be provided for.

It is therefore ordered that the Wisconsin-Minnesota Light & Power Company maintain the level of Long Lake, located in Washburn county, Wisconsin, between the maximum level of 6 feet and the minimum level of 5 feet as represented by the readings on the gage board which was in place at the time of the hearing. The maximum set forth represents an elevation of 101.07 feet when referred to the center of the steel bridge on the upstream side, such bridge being located about 300 feet below the dam. The minimum permissible level when referred to this bench mark shall be 100.07 feet.

In cases of flood due to rain or rapidly melting snow, the

maximum level may for a period of not to exceed 24 hours be raised 3 inches.

Permanent bench marks will be set by this Commission early in the spring.

Railroad Commission of Wisconsin, by John H. Roemer, Halford Erickson, David Harlowe, Commissioners.

OHIO PUBLIC UTILITIES COMMISSION.

IN RE JOINT PETITION OF CITIZENS LIGHT & POWER COMPANY AND MILLERSBURG ELECTRIC LIGHT COMPANY.

[No. 346.]

Sale — Consolidation — Approval.

The sale of the property of one electric light company to another was approved, it appearing that adequate service for a reasonable rate would be furnished and that the service would be improved without any increase in rates.

Orders — Approval of purchase price — Effect — Value.

The Commission's approval of the agreed purchase price of the property of a public-service corporation is not a finding of the value of such property, nor is it an acquiescence in the values placed upon the property by the companies, nor an approval of the consideration stipulated.

Orders — Approval of purchase price — Effect — Rates.

The Commission's approval of the agreed purchase price of the property of a public-service corporation is not a finding that existing rates are reasonable, and not discriminatory.

[January 22, 1915.]

APPLICATION to purchase the property of a public service corporation; granted.

By the Commission: The Millersburg Electric Light Company and the Citizens Light & Power Company, corporations organized and existing under and by virtue of the laws of the state of Ohio, with their offices and principal places of business in the village of Millersburg, Holmes county, Ohio, having, on the 3d day of October, 1914, filed their joint petition praying for the consent and approval of the Public Utilities Commission of Ohio to the sale, transfer, and conveyance to said the Citizens

Light & Power Company of all the property and assets of said the Millersburg Electric Light Company, as fully set out in said petition and exhibits filed therewith, and the time for hearing said matter having been fixed for Thursday, October 29, 1914, at 1 o'clock p. m., and said assignment of said matter having for good cause been vacated, and said matter reassigned for hearing on Tuesday, November 10, 1914, at 1:30 o'clock p. m., and due notice of the time and place of said hearing having been given, and having been heard on said day, and the further consideration thereof continued from day to day, the same came on this day for final consideration upon the petition, the evidence, and exhibits.

After considering the pleadings, hearing the evidence, and examining the exhibits, and being fully advised in the premises, and it appearing that the public will thereby be furnished adequate service for a reasonable and just rate or charge therefor; and it appearing, further, that the service furnished the public will be improved thereby; and it appearing, further, that no increase in rates nor diminution of service will result from said sale, transfer, and conveyance of said property, the Commission is satisfied that the prayer of said petition should be granted. It is therefore

Ordered that said the Millersburg Electric Light Company be and it is hereby authorized to sell, transfer, and convey to said the Citizens Light & Power Company, all of its property and assets, consisting generally of a plant and system for the generation and distribution of electrical energy in the village of Millersburg, Holmes county, Ohio, as the same is more fully set out and described in a detailed inventory of said property filed herein as an exhibit on the 11th day of November, 1914, which said exhibit is hereby made a part of this order by reference; and said the Citizens Light & Power Company is hereby authorized to purchase and acquire said property, and to pay therefor the agreed price of \$16,000. It is further

Ordered that said the Millersburg Electric Light Company and said the Citizens Light & Power Company forthwith file with this Commission schedules providing for their respective withdrawal from and inauguration of service in the localities

now served by the property herein authorized to be sold, transferred, and conveyed. It is further

Ordered that the authority herein granted may be exercised from and after the date of the filing of such schedules with this Commission. It is further

Ordered that nothing herein shall be considered as a finding by the Commission of the value of the property herein authorized to be sold, transferred, and conveyed, either as to the whole thereof, or of any part, nor as an acquiescence in the values placed upon said property by said companies, nor as an approval of the consideration stipulated. It is further

Ordered that nothing herein shall be construed as an approval by the Commission of the rates now charged for service by said parties at any of their stations, or in any municipality or elsewhere, nor as a finding by the Commission that said rates are reasonable, and not excessive, and not discriminatory. It is further

Ordered that nothing herein shall be construed as a finding by the Commission that the service of said companies, at any of their stations, or in any municipality or elsewhere, is adequate, efficient, or sufficient.

The Public Utilities Commission of Ohio, O. H. Hughes, Chairman, C. C. Marshall, E. W. Doty, Commissioners.

SOUTH DAKOTA RAILROAD COMMISSION.

CENTERVILLE TELEPHONE COMPANY

v.

O. C. SHEPPARD.

[Decision F—152.]

Evidence — Materiality.

Evidence that other persons in a community are enjoying the use of business telephone service at residence telephone rates in nowise enters into the determination of whether a telephone instrument installed in a veterinary surgeon's residence should take a business or a residence telephone rate.

Service — Telephone — Classification — Criterion.

The use of a telephone instrument is the criterion by which the classi-

fication of service should be made, subject, however, to the qualification that where a subscriber maintains a business telephone in his office and a residence telephone in his house, the fact that much business is transacted over the residence telephone does not prevent its being classified as a residence telephone, because the subscriber is already paying for a business telephone at his place of business or office.

Service — Telephone — Classification — Veterinary surgeon.

A telephone instrument installed in the residence of a veterinary surgeon, his business being conducted on the premises, must be classified as a business telephone and take the business telephone rate when it appears that such telephone is used for business purposes, although he also uses another subscriber's business telephone, under a private arrangement, for business purposes, but is not a regular business subscriber.

[January 14, 1915.]

APPLICATION for a ruling as to the proper classification of telephone service; ruling made.

By the Commission: In this case, the complaint was filed and hearing held before Commissioner Murphy at Centerville, South Dakota, on October 28, 1914.

From all of the evidence in the case, it appears that Mr. Sheppard is a veterinary surgeon residing and practising at Centerville, in Turner county, South Dakota, and his veterinary hospital is located on the premises also occupied by him as a place of residence, and has installed in his place of residence a telephone instrument, and uses said telephone not only for residential purposes, but for the transaction of his business.

It also appears from the record that Mr. Sheppard makes his headquarters in Heisler's drug store in Centerville; that he has no other office than his place of residence and his veterinary hospital; that on his dwelling house, after his name, appears the word "veterinary," and on the hospital at his place of residence there is a sign reading "Veterinary Hospital."

This case was submitted for the purpose of obtaining a ruling from the Commission as to the proper classification of the services received by Mr. Sheppard from the telephone company.

There was considerable testimony introduced at the time of the hearing as to not only the fact that Dr. Sheppard made his headquarters at the drug store, and did some work in the drug store in the way of assisting the druggist, but also that there were other persons residing in Centerville engaged in various lines

of industry who were enjoying from the Centerville Telephone Company residence telephone services at residence telephone rates, over which business was transacted. The very fact, however, that other persons located in Centerville may have been enjoying the use of business telephone service at residence telephone rates can in nowise enter into the determination as to whether or not a telephone instrument installed in Dr. Sheppard's place of residence is a business or residence telephone.

It is a well-known fact in telephone practice that the use made of the telephone instrument, the service received over it, is the criterion by which the classification should be made, and that a business telephone may be installed not only in a place of business, but in a residence as well. In the case of physicians and veterinary surgeons, as well as dentists and others engaged in similar professions, where an office is maintained and a business telephone is located in the office and a residence telephone at the house, it is true that much business is transacted over the residence telephone, but it is classified as a residence telephone because the subscriber is already paying for and receiving at his place of business or office a business telephone. In those instances, however, where a physician, dentist, or veterinary makes his residence his office, and maintains no other office, and is not a subscriber to and has not had installed at any other place a business telephone, the character of the services performed at his place of residence must determine its classification; and in the instant case, it abundantly appears that the telephone installed in Dr. Sheppard's house is used for business purposes; and he having no other place of business, and not being a subscriber to a business telephone, it necessarily follows that his telephone instrument located in his place of residence must be classified as a business telephone and the rates applicable to business telephones paid by him. The mere fact that Dr. Sheppard has been permitted, through some arrangement with Mr. Heisler, of the drug store in Centerville, to use his telephone for his business purposes for some consideration in the way of assistance at the drug store, does not justify the classification of the 'phone used at his residence as a residence telephone.

It is the conclusion of the Commission, therefore, that Dr. Sheppard should pay the Centerville Telephone Company the business rate filed by it for services in connection with business telephone instruments at Centerville.

SOUTH DAKOTA RAILROAD COMMISSION.

IN RE INVESTIGATION INTO TELEPHONE FACILITIES AND SERVICE FURNISHED BY THE BERESFORD TELEPHONE COMPANY.

[F—166.]

Service — Telephone — Week-day hours.

A telephone company operating a local exchange and rural party lines was ordered to increase its week-day service from 7 A. M.—9 P. M. to 6 A. M.—10 P. M., and on Saturdays 6 A. M.—11 P. M.

Service — Telephone — Sunday hours.

A telephone company operating a local exchange and rural party lines was ordered to increase its Sunday service furnished from 8 A. M. to 12 M. by the addition of the hours 1 P. M. to 7 P. M.

Service — Telephone — Emergency night service.

A telephone company affording night service for emergency calls only was ordered to answer all calls coming into the switch board during the night, and furnish service promptly, on the ground that the subscriber, and not the telephone company or the switch-board operator, is the proper person to determine when an emergency exists.

Service — Telephone — Right of subscriber to select service.

Each subscriber to telephone service has a legal right to select the class of service which shall be furnished him, whether main or party line, either at the time he installs his telephone or at any time while the relation of subscriber exists.

[January 14, 1915.]

INVESTIGATION of telephone facilities and service; improvement ordered.

The appearances are set out in the opinion.

By the Commission: This case came on for hearing at Beresford on January 12, 1915, at the hour of 10 o'clock in the forenoon before Commissioner Dougherty.

City of Beresford appeared by Mr. August Frieberg, the state's attorney.

The Beresford Telephone Company appeared by Messrs. Buelow & Bode, its attorneys, and Mr. Maurice Ryan, its president and general manager.

Witnesses on behalf of both the city and the Beresford Telephone Company were duly sworn, and their testimony taken, and the cause submitted to the Board for decision.

The Board, being fully advised in the premises, now makes and files the following findings of fact:

1. That the Beresford Telephone Company owns and operates at the city of Beresford a telephone system, including a local exchange and rural party telephone lines radiating therefrom, and having connected with it rural party telephone lines owned and operated by independent companies.

That the present rates for service at Beresford and vicinity are as follows:

- Main line business \$2 per month;
- Main line residence \$1 per month;
- Party line residence \$1 per month;
- Rural party line \$1.25 per month.

Further, that the hours of service on week days are from 7 o'clock A. M. to 9 o'clock P. M., and on Sundays from 8 o'clock A. M. to 12 o'clock M., and that the night service is only for emergency calls, which appears to be generally interpreted by the patrons of the telephone company as limited to calls in case of sickness for physicians and nurses.

From the testimony it quite generally appears that these hours of service are unsatisfactory and insufficient, and that more proper and suitable hours of service for week days would be from 6 o'clock A. M. to 10 o'clock P. M., with the single exception that service should extend until 11 o'clock P. M. on Saturday nights; and that on Sundays, the service should commence at the local exchange at 8 o'clock A. M., and continue to 12 o'clock M. and resume at 1 o'clock P. M. and continue until 7 o'clock P. M.

On the general question of what shall be construed as emergency calls, while the patrons of the telephone company have understood such calls to be limited to cases of sickness and calls for physicians and nurses, yet the telephone company, or Mr. Maurice Ryan, its president and general manager, admit that

the emergency calls extend to a more general service, and that in fact the subscriber who makes, and not the operator who answers, the call, should be the judge as to what constitutes an emergency.

Beresford is located in an agricultural country, and many of the patrons connected with its lines are engaged in farming, and there is an actual necessity for telephone service at the Beresford exchange at an hour earlier than 7 o'clock A. M., and while some of the witnesses testified that the service would be required as early as 5 o'clock A. M., the Commission finds that 6 o'clock A. M. would be a reasonable time to the patrons of the company and to the company as well, at which to furnish services at and in the vicinity of Beresford.

It also appears from the testimony in this case that while the present advertised service is until 9 o'clock P. M., there is an insistent demand from the patrons for, and many of them are receiving, services until a later hour in the evening; while some of the patrons wanted the service extended until 11 o'clock P. M., still others until 10:30 o'clock P. M., it was quite generally conceded, and the Commission finds, that 10 o'clock P. M. is a reasonable time at which to discontinue general service, except that on Saturday nights, because of the volume of business transacted at Beresford on Saturdays, public necessity requires that the general local exchange business shall be continued until 11 o'clock P. M., and that service between the time of closing in the evening on week days and Sundays and the resumption of service on the morning following, while indiscriminate use of the telephone service should be discouraged, yet all calls coming into the board should be answered and service furnished to the patrons, and the patrons, and not the operator, should determine whether such an emergency arises as necessitates furnishing the service at the time.

While the advertised service on Sunday is from 8 o'clock until 12 o'clock M., there is a general insistent demand and necessity for services in the afternoon and for a portion of the early part of Sunday evening, and it is quite generally agreed at the hearing that services from 1 o'clock P. M. until 7 o'clock P. M. on Sundays would be quite satisfactory in addition to the morning services already prescribed.

As a matter of fact, it appears from the record that many calls have been made and service furnished on Sunday evenings, although it was generally understood that the exchange was closed on Sunday after 12 o'clock m.

There is some question there on the record as to the opportunity which has been afforded in the past to the subscribers of the Beresford Telephone Company to select the class of service which they desired. The only business service is that furnished by the main line, while as to residence there is some main-line service and some two and some three party-line service. In telephone practice, the patron should be permitted to select at the time of having his 'phone installed or at any time thereafter while the relation of subscriber exists, to select the class of service which he shall enjoy. He should be given, and is entitled to, an opportunity to determine whether he shall have main-line service and pay the rate applicable therefor, or have party-line service and pay the rate for that class of service.

The Beresford Telephone Company, which is the defendant in this proceeding, has quite readily acquiesced at the hearing in all of these demands made by the public, and as conclusions of law from the foregoing facts, the Board now hereby finds and determines as follows:

(A) That from and after the date hereof, the Beresford Telephone Company shall furnish to its patrons at Beresford and vicinity service at its exchange on week days from 6 o'clock A. M. until 10 o'clock P. M. and on Saturday nights extend the service until 11 o'clock P. M. Service on Sunday shall be given from 8 o'clock A. M. to 12 o'clock M. and from 1 o'clock P. M. to 7 o'clock P. M.

(B) That the subscriber, and not the telephone company or the operator at the switch board, is the proper person to determine when an emergency exists, and all calls coming in to the switch board during the nighttime shall be answered and telephone service promptly furnished.

(C) That each subscriber has the legal right to select the class of service which shall be furnished, either at the time he installs his telephone or at any time while the relation of sub-

scriber exists, and he may have at his election either main or party line service.

That an order be made and entered accordingly.

ORDER.

At a regular session of the Board of Railroad Commissioners of the state of South Dakota, begun and held at its offices in the city of Pierre, the capital, on the 14th day of January, 1915.

Present: Commissioners Murphy and Dougherty.

In the above-entitled cause, the Board, having made a complete investigation, and filed its findings and conclusions, and being fully advised in the premises, now makes the following order:

From the date of this order, the Beresford Telephone Company shall furnish to its patrons at Beresford, at the rates now in effect, to wit:

For main-line business telephone \$2 per month;

For main-line residence telephone \$1 per month;

For party-line residence telephone \$1 per month;

with continuous service on week days from 6 o'clock A. M. until 10 o'clock P. M., except that on Saturdays, the evening service shall be extended until 11 o'clock P. M. and on Sundays from 8 o'clock A. M. to 12 o'clock M., and from 1 o'clock P. M. to 7 o'clock P. M., and that at times other than as designated herein and while the exchange is presumed to be closed, the Beresford Telephone Company shall answer and furnish telephone service on all calls coming in on the switch board; and shall at all times afford to its patrons an opportunity to elect whether they shall have main-line or party-line residence telephone service, and shall furnish to such patrons the class of service selected by them, whether it be main-line or party-line service.

WISCONSIN RAILROAD COMMISSION.

CITY OF ASHLAND

v.

MINNEAPOLIS, ST. PAUL, & SAULT STE. MARIE RAILWAY COMPANY.

Commission jurisdiction — Withdrawal of dock from public use.

The Commission has no jurisdiction to compel a railroad company

to keep open and maintain its terminal dock for purposes other than giving the public access to its railroad facilities, either under a statute providing that the original termini or route of a railroad company shall not be changed without the approval of the Commission, or under the general powers of supervision and control vested in it.

Service — Interchange of facilities — Land and water carriers.

The Commission is without jurisdiction to require facilities for the interchange of traffic between land and water carriers.

Railroads — Property of — When private.

The property of a railroad company not devoted to the purpose of giving the service that it holds itself out as offering is essentially private in character and subject to its own control.

Railroads — Public use of terminal dock — License.

A railroad company will not be required to permit the continued use of its terminal dock for purposes other than giving the public access to its railroad facilities, simply because the public had theretofore been allowed the use of the dock as a licensee.

[January 30, 1915.]

PETITION to compel a terminal dock to be kept open for general public use; dismissed.

The appearances are set out in the opinion.

By the **Commission**: A complaint is made by the city of Ashland that the respondent has refused to compel the Central Coal & Dock Company, its lessee, to keep its commercial dock in Ashland, Wisconsin, in proper repair and open for public use. Specific complaint is made of the failure of the respondent to keep the trestle approach to the dock open for traffic. The substance of the case, as set forth by the city's complaint, is that the city is a terminal of a number of railroads including the line of the respondent, the latter having control of what was formerly known as the Wisconsin Central Railway Company's property. The latter railway built a line from Chicago to the city of Ashland some time during the late seventies. This line of railroad entered the city from the southerly side, and extended through it until it reached the shore of Chequamegon bay, and extended out into the bay a distance of some 1,500 feet. A dock and warehouse were built at the end of the line and a trestle approach from the foot of Ellis avenue, the main north and south street of the city, out to and connecting with the dock and the railroad tracks. This approach was used by both teams and pedestrians for the purpose of reaching the dock

and warehouse. Some five years ago the Wisconsin Central Railway Company leased the dock and warehouse to the Central Coal & Dock Company, which now controls and operates it as a coal dock.

It is alleged that during all the time the property was owned and operated by the railway company, the dock in question had been used for commercial purposes, and goods and merchandise had been received and handled at the same, and large amounts of coal had been unloaded there and shipped from the dock over the railroad connecting with it. It appears that passenger boats and boats that handle freight were permitted to land at the dock, and that the public was permitted to use the approach and the dock for the purpose of going to and from boats that landed there.

During the year 1912 the lessee, the Central Coal & Dock Company, allowed the merchandise warehouse that had been located on the dock to be removed, no notice of such removal being given to the city or permission to make the removal obtained from the latter, and that now notice has been given to the city of Ashland that the Central Coal & Dock Company would close the trestle approach to the dock, and that it was thereafter to be operated solely as a private dock. It is alleged that the dock company has refused and neglected to keep the dock in repair, or to rebuild thereon the warehouse for the storage of goods and merchandise.

A request is made for a temporary order compelling the respondent and its lessee to keep open and maintain the approach to the dock until a final decision can be had upon the questions raised, and a prayer is made for an order of the Commission compelling the respondent to keep the dock in repair and to permit the approach to the dock to remain open for public traffic.

It is the contention of the respondent railway company that it has adequate freight and passenger terminals at the city of Ashland; that it still maintains freight service to and from the dock in question; that the railway company is under no obligation to put in repair and maintain the wharf and trestle approach for use as a boat-line terminal, and that the Commission has no jurisdiction to determine or enforce such an obligation should it exist.

The matter came on for hearing on May 20 and on June 9, 1914. The petitioner appeared by M. E. Dillon, city attorney, and T. H. Gill, of Gill & Barry, counsel. Appearances for the respondent were made by E. F. Potter and Kenneth Taylor, its attorney.

The testimony shows that the dock in question was used for many years for the interchange of traffic between lake and rail carriers, and as a means of intercommunication between boats and the city. For some thirty years the trestle approach to the dock was held open for the passage of pedestrians to and from the boats, and for the use of drays and vehicles carrying freight and baggage to and fro. In course of time the volume of traffic handled by the respondent diminished, and recently the lessee of the respondent concluded to close the trestle approach to the dock to the public, and so notified the petitioner.

The application to this Commission is made upon the theory that the respondent railway company entered into the business of conducting a dock at this location under authority of its charter; that the extension of the tracks into the bay formed a part of the original route of the railroad; that the closing of the dock constituted in some manner a change by the railroad company of its route and its operations within the city, and that the statutory method for securing authority of the city council to make such change had not been followed; and, further, that the right to the use of the dock by the public had been acquired by prescription and uninterrupted use during a long series of years. The petitioner seeks to base its application to this Commission for relief upon the provisions of § 1797-58 of the Statutes, which state that a railroad company may alter or change its route upon a two-thirds vote of its directors by making and filing with this Commission a map and certificate of the proposed alteration, provided "that such alteration or change shall not deviate from the original route of such railroad as approved by the Railroad Commission for a greater distance than 1 mile; . . . and also provided that the original termini or route in any city or village shall not be changed by such alteration . . . without the approval of the Railroad Commission." There is no contention made that the termini provided by the respondent company in the city of Ashland are inadequate. It

is shown in the testimony that at least two other terminal facilities are provided by the company for the accommodation of the freight and passenger traffic of the city. Nor is it contended that the railway company contemplates withdrawing the usual freight service to and from the dock in question so as to fail to adequately provide for traffic coming to it from the lake. The sole difficulty seems to be that the dock and the trestle approach thereto are to be withdrawn by the respondent, or its lessee, as a terminal for the various boat lines operating to and from the city of Ashland. It would seem that the question presented for consideration is whether or not this Commission has power and authority to require that the railway company shall continue to offer its property for public use for purposes other than giving the public access to its railroad facilities. There does not appear to be any effort on the part of the railway company to change its route or the character of the termini that it has offered in the city of Ashland. For this reason it is difficult to see how the statute to which reference is above made may be considered as giving this Commission jurisdiction over the matters involved in this case. We are of the opinion that the statute does not give the Commission such jurisdiction.

Nor can we conclude that the Commission has authority under other provisions of the statutes to grant the relief for which prayer is made. While the legislature has conferred authority upon the Commission to compel railway companies to provide reasonable facilities for the interchange of traffic between their respective lines (Wis. Stat. § 1797-11 and § 1802c), at the present time there is no statutory provision empowering the Commission to require facilities for the interchange of traffic between land and water carriers. Indeed, were such authority given under the statute, it is unlikely that the present case would present a situation demanding positive action of the Commission. The facts do not indicate that the railway company is about to abandon the performance of any of its public functions, unless it be construed that the maintenance and operation of the dock for general public use during a series of years has imposed upon the railway company a duty to continue to do so. Even if this construction be adopted, it is doubtful whether or not an order of the Commission would properly be issued to require the

continuation of that service. If it could be shown that the service given was unprofitable, and that its abandonment did not impair the general service given by the railway company, it would be unlikely that the railway company would be required to continue that service. *Brown v. Janesville Street Ry. Co.* 4 Wis. R. C. R. 761; *Jack v. Williams*, 113 Fed. 823; *Covington & L. Turnp. Road Co. v. Sandford*, 164 U. S. 578, 41 L. ed. 560, 17 Sup. Ct. Rep. 198.

Much less would it seem that a railway company should be required to maintain and offer its facilities to the public as a gratuity. It is shown that in this case the maintenance of the dock and wharf is desired for the sole purpose of accommodating the public, irrespective of the necessities of the public in reaching the property of the company to obtain railroad service. Property not devoted to the purpose of giving the service that the railway company holds itself out as offering is essentially private in character and subject to the control of the railway company. It has been held that a railway company is not required to maintain a dock for the purpose of allowing any competing carriers to load and discharge goods. Such a dock or wharf is the company's private property, to which it has the sole right of occupancy and the power of regulation thereof. *Louisville & N. R. Co. v. West Coast Naval Stores Co.* 198 U. S. 483, 49 L. ed. 1135, 25 Sup. Ct. Rep. 745. The right of a railway company to control its private property goes even to the extent of permitting some to use it while at the same time excluding others to whom it is not willing to grant that privilege. *Weems St. B. Co. v. People's St. B. Co.* 214 U. S. 345, 53 L. ed. 1024, 29 Sup. Ct. Rep. 661, 16 Ann. Cas. 1222. It is clear from the statements of law that have been made that the railway company is not required to permit the continued use of its dock or wharf by the public simply because the public had heretofore been allowed the use of the dock as a licensee. *Parkersburg & O. River Transp. Co. v. Parkersburg*, 107 U. S. 693, 27 L. ed. 585, 2 Sup. Ct. Rep. 732.

Neither in the statutory provisions applicable to such cases, therefore, nor in the general powers of supervision and control vested in the Commission by the law, does there seem to be authority by which the Commission may enter an order requir-

ing the railway company in this case to continue to leave the dock property in question open to the public use. Since the Commission is limited in the exercise of the powers specifically granted or necessarily implied, it is without power to afford relief from the conditions presented in the petitioner's complaint. Accordingly, the petition will be dismissed.

Now, therefore, it is ordered that the petition herein be, and the same is, hereby dismissed without prejudice.

Railroad Commission of Wisconsin, by John H. Roemer,
David Harlowe, Commissioners.

Note.—It should be observed that the Commission intimates in this case that even though it were construed that the maintenance and operation by a railroad company of a dock for general public use during a series of years had imposed upon the company a duty to continue such service, it is unlikely that such duty would be enforced if it were shown that the service was unprofitable and that its abandonment would not impair the general service given by the company.

ARIZONA CORPORATION COMMISSION.

IN RE PACIFIC GAS & ELECTRIC CORPORATION.

[Docket No. 161.]

Service — Notice of disconnection.

A gas and electric company was allowed to substitute a rule which required one notice only to be mailed to delinquent consumers before disconnecting service, in place of its former rule requiring two such notices, on the ground that the expense incident to a second notice should not be incurred.

[February 1, 1915.]

APPLICATION for authority to change service rule; granted.

OPINION AND ORDER.

By the Commission: The applicant company has in effect certain "rules and regulations" relating to gas and electric service, collection of charges for such service, classification of consumers, etc.

By application, the company asks to be permitted to change its service rule known as rule No. 10, covering procedure in case of delinquency in payment of consumers' accounts. The company's rule No. 10 now provides as follows:

"First Notice: The company will mail or deliver a first notice to each delinquent consumer at his last-known address on or about the 17th day of each month.

"Second Notice: The company will mail a second notice to each delinquent consumer at his last-known address on or about the 24th day of each month.

"In the event that any delinquent consumer, to whom second notice has been mailed, has not reported at the office of the company and paid his bills in full previous to the 26th day of the said month, then the company's collector will endeavor, in the first instance, to deliver a second notice to the consumer in person, or to his representative or some person on the premises where the gas and/or electricity was served, and if the collector then fails to secure payment of the delinquent bills, and if the said bills are not paid by the 28th of said month, the service will be disconnected."

In lieu of this they propose the following: "All bills for gas and electric service unpaid by the 18th of the month succeeding that in which service is rendered shall be delinquent.

"Notice of Delinquency: The company will mail a notice of delinquency to each delinquent consumer at his last-known address on or before the 20th day of each month.

"Disconnection: In the event that any delinquent consumer to whom notice has been mailed has not paid his delinquent account in full on or before the 26th day of such month, then the service will be disconnected."

Hearing on this proposed change was had January 25, 1915, notice having been given to the public through the press, and to the company in the usual manner. No one appeared except a representative of the company.

It was stated by the company that their present rules, above quoted, requiring a first and second notice to delinquent consumers, imposes an unnecessary expense upon the company in clerical work, printing, and postage; that in the end this expense must necessarily be borne by all of the consumers of the com-

pany; that experience had demonstrated that very few delinquent consumers pay between the dates of the first and the second notice; and that approximately the same number of second notices are required to be mailed, under existing rules, as of first notices.

All facts considered, we are of the opinion that the expense incident to a second notice should not be incurred, and that the following rules covering this phase of the company's affairs are reasonable. It will be noticed that slight changes are made in the rule proposed by the company, the purpose of which is to make it clear that penalty shall not be imposed for the nonpayment of merchandise bills.

It is therefore ordered that the Pacific Gas & Electric Company is authorized to publish and make effective March 1, 1915, the following rules in lieu of §§ 3, 4, and 5, rule 10, now in force:

"All bills for gas and electric service unpaid by the 18th of the month succeeding that in which service is rendered shall be delinquent.

"Notice of Delinquency: The company will mail a notice of such delinquency to each delinquent consumer at his last-known address on or before the 20th day of each month.

"Disconnection: In the event that any delinquent consumer to whom notice has been mailed has not paid such delinquent account in full on or before the 26th day of such month, then the service will be disconnected."

Arizona Corporation Commission, F. A. Jones, Chairman,
A. W. Cole, Commissioners.

DISTRICT OF COLUMBIA PUBLIC UTILITIES COMMISSION.

IN RE REGULATIONS FOR ELECTRIC SERVICE IN THE DISTRICT OF COLUMBIA.

[P. U. C. No. 1236.]

Service — Electric — Regulations.

All corporations and persons furnishing electric service in the District of Columbia are required to obey and comply with the regulations

for such service, prescribed by the Public Utilities Commission in order No. 139, January 30, 1915, unless, upon application to the Commission, modifications or exemptions are authorized.

[January 30, 1915.]

REGULATIONS with respect to electric meters, tests, inspections, fees, records, bills, and voltage prescribed.

By the **Commission**: Ordered: (1) That, under the authority of § 8 of the District of Columbia appropriation act, approved March 4, 1913, creating the Public Utilities Commission, the following regulations for electric service in the District of Columbia be, and the same are hereby, made and prescribed, and obedience thereto and compliance therewith are hereby required of and enjoined upon all corporations and persons furnishing electric service in the District of Columbia, their officers, agents, and employees.

(2) That, on application to the Commission and for sufficient cause shown, such modifications and exemptions may be made with reference to these regulations as the facts in each case shall warrant. Noncompliance with any of these regulations will constitute a violation of the law unless such noncompliance is specifically authorized by an order of the Commission.

(3) That the department of this Commission which has charge of the supervision of electric service be called the Electrical Inspection Bureau.

(4) That these regulations shall take effect February 15, 1915, and shall continue in force until changed or abrogated by further order of the Commission.

REGULATIONS. *

Location of Meters.

Section 1. A meter should be so located as to be as near as possible to the point where the service enters the building, to be accessible with a minimum of annoyance to the tenants, to be easily read, to be surrounded by sufficient space to permit the tester to arrange and use his testing apparatus and to make the necessary inspection and adjustments. A meter should be installed on a stable support, in a clean, dry, safe place, free from vibration, and not subject to great variation in temperature.

When two or more meters are installed, the distance between

centers of commutator type direct current meters shall not be less than 15 inches, and the distance between centers of mercury type direct current or induction type alternating current meters shall not be less than 12 inches.

Watt-hour Meter Testing.

Testing Rules.

Section 2. All tests made pursuant to these regulations shall be made in compliance with the following rules:

(A) All instruments used as standard instruments in testing meters shall be equipped with scales properly proportioned to the loads measured.

(B) Tests shall be made with the meter in its permanent position on the consumer's premises, and as nearly as possible under operating conditions as regards voltage, frequency, temperature, stray fields, vibration, etc.

(C) When practicable, all meters shall be tested at the following loads: light load (10 per cent of rated capacity of meter), and full load (60 per cent to 100 per cent of rated capacity of meter). On request tests and on referee tests, however, the meter shall also be tested at normal load. In the case of an installation on which it is not practicable to obtain these loads, tests shall be made at loads as near as possible to these. In a case in which the full connected installation¹ amounts to less than the rated capacity of the meter, the full connected installation may be taken as the full load of the meter. In determining the normal load the following percentages of the several classes of the full connected installation shall be used:

(a) Residence and apartment lighting	25%
(b) Elevator service	40%
(c) Factory lighting, individual drives, churches, offices, stables, hotels	45%
(d) Factory shaft drives, theaters, clubs, hallways, entrances, and general store lighting	60%
(e) Saloons, restaurants, pumps, air compressors, and ice machines	70%
(f) Sign and window lighting, blowers, moving picture machines ..	100%

When a meter is found to be connected to an installation consisting of several of the above classes of loads, the normal load shall be obtained by multiplying the connected watt load of each class by the percentage specified above, and adding the results.

¹ The full connected installation includes all electrical apparatus found connected and capable of being put in practical operation by the closing of a switch or switches, the installing of fuses, or the operation of controlling devices.

(D) Two tests shall be made at each load at which the meter is tested, but should these two tests fail to agree within 0.8 per cent, additional tests shall be made until two results are obtained which do agree within 0.8 per cent. On all tests each reading shall cover a period of at least 30 seconds.

(E) Where potential transformers are used in connection with a meter, and the line voltage does not exceed 600 volts, the meter shall be tested from the line side of such apparatus. Where current transformers are used in connection with a meter, and the line voltage does not exceed 600 volts, and the current capacity of the transformer does not exceed 150 amperes, the meter shall be tested from the line side of such apparatus.

Where potential or current transformers are used in connection with a meter, and the line voltage exceeds 600 volts, or the capacity of the current transformer exceeds 150 amperes, the meter may be tested as a self-contained meter, and the ratio certificates of the transformers may be used in calculating the true line watts, provided that, in the case of request and referee tests, said certificates are dated within the year preceding the date of test of the meter, and, in the case of all other tests, said certificates are dated within the five years preceding the date of test of the meter.

(F) Where shunts are used in connection with a meter, and the current capacity of the shunts does not exceed 600 amperes, the meter shall be tested from the line side of such apparatus. At each test, the voltage drop through the shunt leads, the meter, and their connections, should be measured in order to determine whether it has changed since previous tests.

When the current capacity of the shunts exceeds 600 amperes, the meter may be tested as a self-contained meter, and the calibration certificates of the shunts may be used in calculating the true line watts, provided that, in the case of request and referee tests, said certificates are dated within the year preceding the date of test of the meter, and, in the case of all other tests, said certificates are dated within the five years preceding the date of test of the meter.

(G) After test, a meter shall be adjusted by the electrical corporation so as to register with an error of not more than 1

per cent at light and full loads when compared with a working standard, and so as to be without creep.

(11) Observations for creep shall be made with all house wires removed from the meter, and, where practicable, with no current passing through the consumer's circuits.

Tests by Electrical Corporation.

Apparatus.

Section 3. Each electrical corporation shall provide and maintain suitable apparatus and facilities for testing the accuracy of meters.

Section 4. All working standards shall be tested for accuracy as often as is necessary to insure their maintenance in proper condition for testing meters. If not checked in the laboratory of the electrical corporation, working standards shall be tested in a properly equipped laboratory of recognized standing. Each working standard shall at all times be accompanied by a certificate giving date on which it was last checked and the corrections to be applied to various loads, signed by the proper authority. The certificates, when superseded, shall be kept on file in the office of the electrical corporation.

Installation Tests and Inspections.

Section 5. An installation test shall be made on all commutator type meters.

An installation test or an installation inspection shall be made on all induction type meters.

The period between the installation of a meter and the installation test or inspection should be long enough to allow the meter and the conditions around it to reach a fairly permanent state, but not long enough to permit a large registration.

Request Tests.

Section 6. Each corporation shall, without charge, make a test of the accuracy of a meter upon request of a consumer, provided that the meter in question has not been tested by either the corporation or the Commission within six months previous to such request. A report giving the results of the test shall be furnished to the consumer.

Periodic Tests.

Section 7. All continuous current commutator type meters

installed on consumers' premises shall be tested periodically as follows:

(a) Meters up to and including 50 amperes rated capacity, at least once in every eighteen months.

(b) Over 50 amperes and including 150 amperes, at least once in every twelve months.

(c) Over 150 amperes, at least once in every eight months.

All alternating current induction type meters shall be tested periodically as follows:

(d) Single and polyphase meters up to and including 50 amperes rated capacity, at least once in every thirty months.

(e) Over 50 amperes and including 150 amperes, at least once in every twenty-four months.

(f) Over 150 amperes, at least once in every twelve months.

Records and Reports.

Section 8. Each corporation shall keep a complete record of each request, periodic, and inquiry (or office)² test made by it of meters installed on consumers' premises. Such records shall include owning corporation's number, manufacturer's name and number, type, rated volts and amperes, wire, and the average readings at light load, at normal load, and at full load.

Each corporation shall keep a record of the dates on which its meters are installed in and removed from the service of consumers.

Section 9. Each corporation shall submit to the Commission in the form prescribed by the Commission a monthly report of the results of all tests of meters made during that month. Such reports shall be made for the calendar month, and shall be submitted not later than the 15th of the month following.

Tests by Commission.

Referee Tests.

Section 10. Upon application of any consumer to the electrical inspection bureau, a test shall be made of the consumer's meter by the bureau after deposit by the consumer of the prescribed fee. If, upon test, the meter is found to have an error in registration not in excess of 4 per cent or to read slow, the fee de-

² An inquiry (or office) test is a test of a watthour meter in its permanent position on a consumer's premises made by, and at the instance of, an electrical corporation for the purpose of investigating the cause of apparently abnormal registration.

posited by the consumer at the time of making application for the test will be kept. If, upon test, the meter is found to read fast in excess of 4 per cent on any of the three loads prescribed herein, the fee deposited by the consumer will be returned, and the prescribed fee shall be paid by the electrical corporation owning the meter.

Section 11. Upon application of an electrical corporation to the electrical inspection bureau, a meter shall be tested by the bureau, and the prescribed fee shall be paid therefor by the said corporation.

Fees and Records.

Section 12. The prescribed fees for referee tests of meters shall be as follows: \$1 for each meter not exceeding 50 amperes rated capacity; \$2 for each meter of greater capacity.

Section 13. The electrical inspection bureau shall keep a complete record of each test of a meter made by it, and of all fees due and received for such testing. All such fees shall be paid by the bureau to the collector of taxes of the District of Columbia for payment into the Treasury of the United States, to be placed to the credit of the United States and the District of Columbia in equal parts.

Bills.

Section 14. If the dial of a watthour meter does not read directly in kilowatt-hours, the dial constant shall be clearly indicated on the meter, where it can be seen without disturbing any part of the meter.

All bills rendered periodically for service by an electrical corporation shall show on the face thereof the number and kind of units of service supplied, the dates on which the readings were taken, the price per unit of service, and a statement in bold type that the readings of the meter will be furnished on bills upon request. On all bills which are computed on any other basis than a definite charge per unit of service, the other factors used in computing the bills shall be clearly stated so that the amount may be readily checked from the information appearing on the bills.

Voltage.

Section 15. On all constant potential systems, electrical cor-

porations shall maintain at the consumer's service cut-out a standard voltage within the following percentages: (3) per cent from the standard during lighting hours, and (10) per cent from the standard during other hours on systems primarily for lighting; (10) per cent from the standard on power circuits (trolley circuits excluded).

Variations in voltage of momentary duration which do not occur successively, and variations caused by the operation of apparatus on the consumer's premises in violation of the rules of the electrical corporation, or due to other causes beyond the control of the corporation, shall not be considered a violation of this section.

INDIANA PUBLIC SERVICE COMMISSION.

IN RE LOOGOOTEE WATER COMPANY.

[No. 1281.]

Security issues — Construction cost of property covered by.

A water company was authorized to issue its stock and bonds in the total amount of \$35,000 where the evidence showed that the total cost of construction of its properties was in excess of the amount of such issue.

Security issues — Organization expenses — Operating capital — Interest during construction — Deficit during early operations.

The sum of \$500 for incorporating, legal and other necessary expenses incidental to organization, and \$1,000 for operating capital, interest during construction, and possible operating deficit during early period of operations, were considered reasonable allowances to be included in the cost of construction of a water company's properties as a basis for an issue of securities, where the total cost of construction was found to be about \$35,000.

Security issues — Common stock — Sale price.

A water company was authorized to issue \$20,000 of common stock to be sold at par.

Security issues — Preferred stock — Sale price.

A water company was authorized to issue \$5,000 of preferred stock to be sold at not less than 94 per cent of its par value.

[January 30, 1915.]

APPLICATION for authority to issue preferred and common stock and bonds; granted.

By the Commission: The Loogootee Water Company files its application, alleging in substance that it is a corporation duly organized under the laws of the state of Indiana May 19, 1914; that its principal place of business is located in the town of Loogootee, Martin county, Indiana, and its water plant is located in said town; that it is a public utility organized for the purpose of supplying the town and inhabitants of Loogootee and communities adjacent thereto with water for domestic use, fire protection, and other purposes; that said company desires to issue \$20,000 in common stock and \$5,000 of preferred stock, said preferred stock to bear 6 per cent cumulative dividends payable semiannually, redeemable at the rate of \$1,000 par value annually in \$500 or 10 shares of \$50 each on the 1st day of February and August respectively, beginning February 1, 1916; that said common stock shall be sold at par and said preferred stock be sold at not less than 94 per cent of par value; that said company desires to issue \$10,000 of bonds in denominations of \$100 each, bearing 6 per cent interest per annum payable semiannually; that said bonds shall be subject to redemption in sums of \$500 each, each year beginning in the year 1920, until the whole of said issue shall have been paid; that the proceeds to be derived from the sale of said stock and bonds shall be used for the purpose of paying for the construction of the waterworks system and plant in the town of Loogootee and now in operation, and for the additions thereto; that the total cost of said plant is \$33,500, incorporating legal and other necessary expenses incurred in connection with the organization of the company, \$500; for operating capital and interest during construction period and possible operating deficit during early period of operation, \$1,000; total, \$35,000.

The evidence submitted in behalf of the application shows that the Loogootee Water Company is a corporation duly organized under the laws of the state of Indiana, and that it has constructed a water plant in the town of Loogootee which is now in operation; that the cost of the construction of said plant, including pumping station, distribution system, meters, tools, etc., is \$33,870; that a reasonable amount for incidentals in connection with the construction of said plant and operating capital would be \$1,500, or a total of \$35,370; that the cost of construc-

tion, including the installation of an additional pump costing about \$2,000, is necessary to complete said plant so that the same shall be in an adequately complete condition to furnish reasonable and satisfactory service to said town and its inhabitants.

It is therefore ordered that authority be, and is hereby, granted to said Loogootee Water Company to issue \$20,000 of common stock in sums of \$100 per share, and the same to be sold at the par value thereof.

It is further ordered that said Loogootee Water Company be, and is hereby, authorized to sell \$5,000 of preferred stock at not less than 94 per cent of the par value thereof; that the same shall bear 6 per cent cumulative dividends and be subject to redemption in sums of \$1,000 per year, payable \$500 on February 1, 1916, and August 1, 1916, and semiannually thereafter on the first of said months.

It is further ordered that said company be, and is hereby, authorized to sell \$10,000 of the bonds of said company in denominations of \$100 each, numbered serially and 5 of which bonds shall be payable each year beginning February 1, 1920, said bonds to bear 6 per cent interest payable semiannually.

It is further ordered that said company shall report to the Public Service Commission of Indiana, when sale of said bonds and stock has been made, the amount so obtained for said securities, and shall report to said Commission the disposition made of the funds arising from the sale thereof, said report to be made not later than May 1, 1915.

It is further ordered that said company shall pay to the state of Indiana the sum of \$52.50 as the fee authorized by law to be paid upon receiving an order for the issuance of stocks and bonds by any public utility company, receipt of which is hereby acknowledged.

Note.—Security issues authorized.

The Commission has also granted the following applications for security issues:

Re Syracuse Power & Light Co. No. 1107, January 19, 1915. Preferred capital stock of the total par value of \$25,000, the proceeds from the sale of \$18,000 of said stock to be applied to the redemption of the company's bonds of the face value of \$18,000, the proceeds

from the sale of \$7,000 of said stock to be expended for betterments and extensions to the company's property.

Re Waterworks Co. of Ferdinand, Indiana, and Town of Ferdinand, No. 1254, January 26, 1915. Common capital stock of the total par value of \$7,000 and preferred capital stock of the total par value of \$14,000, the proceeds to be applied to the construction of a water plant and acquisition of property necessary therefor.

Re Noblesville Heat, Light & P. Co. No. 1246, February 1, 1915. Twenty-year bonds of total par value of \$25,000 for the acquisition of property, the construction, completion, extension, and improvement of its facilities and distributing system, and the improvement of its service and discharge of its obligations, and the reimbursement of its treasury for money actually expended from income on its properties.

Re Princeton Lighting & Water Co. No. 1272, February 3, 1915. Preferred capital stock of the total par value of \$50,000 for the discharge and refunding of the company's bonded indebtedness, the installation of a filtration plant, purchase of meters, material, and supplies, installation of hydrants, extension of mains, and for expenses incident to its litigation before the Commission.

Re Montpelier Utilities Co. No. 1092, February 3, 1915. A former order of the Commission authorizing an issue of \$50,000 of bonds maturing in ten years, on application of the company, was modified so as to permit the company to fix the maturity date of the bonds at twenty years.

Sale price of securities.

Re Syracuse Power & Light Co. No. 1107, January 19, 1915. Of an authorized issue of \$25,000 of preferred stock bearing 6 per cent per annum cumulative dividends, \$18,000 par value thereof was ordered to be sold at not less than par, and \$7,000 par value thereof at not less than 90 per cent of par.

In Re Waterworks Co. of Ferdinand, No. 1254, January 26, 1915, \$7,000 par value of common stock and \$14,000 par value preferred stock bearing 5 per cent per annum dividends was authorized to be sold at not less than par.

In Re Noblesville Heat, Light, & P. Co. No. 1246, February 1, 1915, \$25,000 par value of bonds bearing interest at 6 per cent per annum was authorized to be sold at not less than 90 per cent of par.

In Re Princeton Lighting & Water Co. No. 1272, February 3, 1915, \$28,500 preferred stock bearing 5 per cent per annum cumulative dividends was authorized to be sold for not less than 95 per cent of par.

In Re Montpelier Utilities Co. No. 1092, February 3, 1915, \$28,500 par value of bonds bearing interest at 6 per cent per annum were authorized to be sold at not less than 95 per cent of par.

INDIANA PUBLIC SERVICE COMMISSION.

IN RE PETITION OF THE FIRE DEPARTMENT OF SOUTH
BEND FOR FREE TRANSPORTATION.

[No. 1241.]

Street railroads — Free transportation — Firemen.

The laws of Indiana prohibit the issuing of free transportation to members of a fire department merely because they are such.

[February 6, 1915.]

PETITION by members of fire department to be allowed to ride free on city street railways while on duty; denied.

By the **Commission**: In this case the members of the fire department of the city of South Bend, through their assistant chief, William Smith, have filed a petition setting forth the reasons why they deem a necessity to exist for the members of the fire department to be allowed to ride free while on duty, on the city railways within the corporate limits of South Bend, and they very courteously ask the consideration of this matter at the hands of this Commission. We assume this to be a request that the Commission determine whether it has any power to grant or order such free transportation.

Section 114 of the Shively-Spencer utility commission act in force on and after May 1, 1913, is as follows:

“If any public utility make or give any undue or unreasonable preference or advantage to any particular person, firm, or corporation, or shall subject any particular person, firm, or corporation to any undue or unreasonable prejudice or disadvantage in any respect whatsoever, such public utility shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared unlawful. Any person, firm, or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$50 nor more than \$1,000 for each offense. Nothing in this act shall prevent a public utility from furnishing free or reduced service to any of its employees nor prevent a street railway or interurban railway from

granting free or reduced transportation to any person as provided by law for railroads and other common carriers."

This section clearly makes the furnishing of free transportation unlawful except that the street railways or interurban railways may grant such free transportation under the same conditions as is provided by law for railroads and other common carriers. Looking, then, to the provisions of the law governing railroads and other common carriers, we find that division "E" of § 13 of the act, approved March 9, 1907, amending the act creating the Railroad Commission of Indiana, which said division "E" beginning on page 479 of the Acts of 1907, or so much of said division as is applicable to the matter under consideration, reads as follows:

"No carrier subject to the provisions of this act shall, directly or indirectly, issue or give any free ticket, free pass, or free transportation for passengers, freight, or express, or for service or accommodation in any sleeping car, parlor car, or dining car, except to its employees and members of their families, and the widow and dependent members of the families of deceased employees, its officers, agents, surgeons, physicians, and lawyers and members of their families; to ministers of religion, traveling secretaries of the Young Men's Christian Association, and the Young Women's Christian Association, inmates of hospitals, and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to aged, destitute, and homeless persons, and to such persons when transported by charitable societies and hospitals, and the necessary agents employed in such transportation; to inmates of the national homes, or state homes for disabled volunteer soldiers, and of soldiers' and sailors' homes, including those about to enter and those returning after discharge, and boards of managers of such homes; Provided, further, That the provisions of this paragraph shall not apply to any pass legally issued for the year 1907, or any part thereof, heretofore issued and given, nor shall this provision apply to parties carried for the purpose of inspecting the carrier's lines with a view to investing in its securities or the improvement of its property, or to policemen or other peace officers while in uniform within their respective towns and cities."

Construing these sections together, we are forced to the con-

clusion that the law, as it now stands, prohibits the issuing of free transportation to members of a fire department simply for the reason that they are such members of the fire department.

This Commission has no discretion whatever and no power to modify the law in this matter, and cannot grant any authority to issue such free transportation by an order of the Commission. Concluding, as we do, that the law is clearly against the issuing of such free transportation, and that we have no authority to modify the law, we are compelled to deny any prayer, if such there be, in the petition for any relief in the premises.

INDIANA PUBLIC SERVICE COMMISSION.

IN RE LINTON WATER COMPANY

[No. 558.]

Security issues — Floating debt retired — Treasury reimbursed for expenditures of last five years.

A water company was authorized to issue \$37,000 par value of common stock out of a total authorized issue of \$48,500, the proceeds therefrom to be used in paying off floating indebtedness incurred by the company on account of extensions and betterments to the plant, and to reimburse the treasury for money expended out of operating revenue within the last five years in making betterments and extensions to the property which were properly chargeable to capital account.

Security issues — Sale price.

A water company was authorized to issue \$37,000 par value of common stock at not less than 90 per cent of par.

Security issues — Stock dividends.

A water company was authorized to issue \$11,500 par value of common stock to its stockholders in proportion to the face value of their present holdings, as a stock dividend to compensate them in full for the use by the company of its net surplus, amounting to \$24,556.76, in extensions and betterments of plant, instead of applying the same to the payment of cash dividends.

[February 6, 1915.]

APPLICATION for authority to issue stock; granted.

By the Commission: On March 10, 1914, the Linton Water Company filed in this case a petition for authority to issue and

sell stock. The evidence was introduced on the 20th day of April, 1914.

The petitioner is a corporation with an authorized capital of \$100,000, of which \$16,500 has been issued and is now outstanding.

The corporation was organized in 1901. It now has a plant which had cost, at the time the petition was filed, slightly more than \$130,000. This plant has been constructed with money borrowed from time to time on the paper of the corporation and indorsed by the stockholders, personally, and with profits or net earnings from the business. In 1905 the promoters presented to the corporation bills for their services in managing the business of the concern and furnishing it financial support, and in settlement of these claims and by way of a stock dividend in lieu of cash dividends the corporation issued the stock now outstanding.

Said stock was, at the time the petition was filed, held by the following parties, and in the following amounts: Joseph Moss, \$5,000; Doctor J. Terhune, \$5,000; Francis M. Dugger, \$5,000; F. A. Gageby, \$500; E. Nixon, \$500; and David D. Terhune, \$500. No dividends have ever been declared or paid on said stock or on any stock of said corporation. The net surplus from the earnings of the corporation have from year to year been used in extensions and new construction.

The corporation now has a bonded indebtedness amounting to \$65,000, and at the time of the filing of the petition it had a floating indebtedness amounting to \$28,000, and since the petition was filed an additional indebtedness of \$5,000 has been incurred for new extensions and betterments to the plant of the petitioner.

The net earnings of the plant for the year 1913 over operating expenses, maintenance, and fixed charges, were \$2,933.43, and the net earnings of the plant since its organization amount to \$24,556.76, all of which have been turned into plant accounts instead of being distributed as dividends.

The petitioner prays for authority to issue and sell at not less than 90 per cent of par \$32,000 face value of stock to provide for funds from which to pay its floating debts, and to issue \$16,500 par value of its stock to its stockholders *pro rata*, in payment of dividends which might lawfully have been paid from its surplus which has been expended in building its plant, and as com-

pensation for the services of said stockholders in advising and managing the affairs of the company and indorsing its paper so as to enable it to readily secure loans at a fair rate of interest.

Since the hearing the petitioners have verbally requested that an additional \$5,000, face value, of stock be sold and the proceeds applied to the payment of the additional \$5,000 of floating debts; and that \$11,500 of stock be distributed *pro rata* among the stockholders as a stock dividend and in payment for services as above.

The petition is in conformity to law.

It is therefore ordered by the Public Service Commission of Indiana That the Linton Water Company be and is hereby authorized to issue common stock of the face value of \$48,500, and to sell \$37,000, face value, thereof for cash at not less than 90 per cent of par, and to use the proceeds of such sale to pay the floating indebtedness of said company, created on account of extensions and betterments to the plant of the petitioner, and for the payment of which no bonds of said company have heretofore been authorized and issued, and to reimburse the treasury of said company for any money expended out of operating revenues within the last five years in making betterments and extensions to the property of the petitioner, properly chargeable to capital account.

It is further ordered, that the petitioner be authorized to issue \$11,500 of said capital stock to the present stockholders in proportion to the face value of their present holdings of said stock as a stock dividend in lieu of cash dividend, and as a compensation to them in full for the sum of \$24,556.76 of net surplus in the treasury of the company, which was available for the purpose of dividend, and which was applied in payment for extensions and betterments to the property and plant of the petitioner, instead of applying the same to the payment of dividends.

On the payment to the state of Indiana of a fee of \$72.75, the secretary of this Commission is authorized to issue to the petitioner a duly certified copy of this order as its full and sufficient authority to issue and sell and distribute said stock.

MICHIGAN RAILROAD COMMISSION.

IN RE PETITION OF THE NILES GASLIGHT COMPANY.

[D 844.]

Security issues — Bonds — Reproduction value.

A gas company having a capital stock of \$150,000, with a reproductive value, exclusive of going-concern value, of approximately \$274,982, was authorized to issue its 6 per cent corporate bonds to the par value of \$400,000, secured by first mortgage or deed of trust, \$140,000 of which were ordered to be issued immediately and sold at not less than 90 per cent of the par value, the remainder to be held in the treasury unpledged or unencumbered, subject to the order of the Commission, the proceeds of the \$140,000 issue to be used to discharge a bonded indebtedness of \$30,000 on its property, and for other lawful purposes of the corporation.

[February 3d, 1915.]

APPLICATION for authority to issue corporate bonds; granted.

By the Commission: Application was filed herein on the 23d day of July, A. D. 1914, from which said application and the accompanying documents and the files and records in said matter, it appears that the said petitioner is incorporated under articles of association bearing date April 27th, 1906, and recorded at Lansing on April 30th, 1906, with a capital stock of \$150,000, consisting of 1,500 shares of the par value of \$100 each. That the declared purpose of said corporation is the producing and supplying gas for lighting, fuel, and other purposes, and that its principal office is in the city of Niles, Michigan.

That it further appears that the said petitioner is the owner of certain real estate, personal property, franchises and other property, a large portion of which it acquired by purchase from the Niles Gas Company, and which property is still subject to an underlying mortgage given by the said Niles Gas Company, dated February 2d, 1903, securing an issue of bonds aggregating the principal sum of \$30,000, bearing interest at the rate of 6 per cent per annum, maturing on February 2d, 1923, but subject to call as therein provided.

That it further appears that the petitioner has made extensive alterations, additions, and improvements to its plant and property in the city of Niles, Michigan, since it acquired the same,

and has also extended its mains and lines so as to serve the village of Buchanan, Michigan.

That for the purpose of ascertaining the value of the properties which the said petitioner proposes to mortgage as security for the payment of its corporate bonds, this Commission has caused said property to be examined, inventoried, and appraised, from which said appraisal it has been made to appear that said properties have a reproduction value approximately the sum of \$274,892, which said sum does not include anything for the value of said property as a going concern.

That for the purposes of said petitioner it is desired that its authorized capital of \$150,000, all of which is common stock, and has already been issued, shall remain as it now is, and that petitioner shall make a first mortgage or deed of trust upon all of its property now owned by it, or hereafter acquired, in a sum not exceeding \$400,000, securing its corporate bonds of like amount, said bonds bearing interest at the rate of 6 per cent per annum, to be dated August 1, 1914, and to mature August 1st, 1939; of which said bonds \$140,000 par value shall be issued forthwith and sold at not less than 90 per cent of their par value, and the proceeds derived therefrom to be used in the payment of the underlying mortgage and bonds secured thereunder, given by the Niles Gas Company, aggregating \$30,000, and the balance for other proper corporate purposes of the petitioner; that the remainder of said corporate bonds shall remain in the treasury of said corporation unpledged, unsold, and not in any manner encumbered or disposed of until further application to and order hereinafter to be made by this Commission.

And this Commission being fully advised in the premises, and of the opinion that said corporate bonds are reasonably required for the purposes of said corporation, Therefore, By virtue of the authority vested in us by law, it is hereby ordered:

1. That there be hereby authorized for the use and purposes of said Niles Gaslight Company corporate bonds to the amount of the par value of \$400,000, to be secured by a first mortgage or deed of trust upon all of the property of said corporation to a trustee or trustees to be therein named; said corporate bonds to bear interest at the rate of 6 per cent per annum, to be dated August 1, 1914, and to mature August 1, 1939.

2. That of the corporate bonds hereby authorized there be presently issued bonds to the amount of the par value of \$110,000, said bonds to be sold at not less than 90 per cent of their par value, and that from the proceeds of the sale of said \$110,000 of corporate bonds, said corporation shall pay and discharge the underlying mortgage and bonds secured thereunder, aggregating \$30,000 given by the Niles Gas Company, and dated February 2d, 1903, and the balance of said proceeds to be used for other lawful purposes of said corporation.

3. And it is further ordered that the remainder of said corporate bonds to the amount of \$260,000 par value remain in the treasury of said corporation, in no manner pledged, sold, or otherwise encumbered or disposed of, until further order of this Commission, made upon application herein.

4. And it is further ordered that before any corporate bonds shall be issued under and by virtue of the provisions of this order, a certified copy of this order shall be entered upon the records of said corporation.

5. And it is further ordered that on or before six months from this date said corporation shall, by a statement duly verified, report to this Commission the sale or transfer of any or all of said corporate bonds under and by virtue of the provisions of this order, and shall make a like report upon the expiration of each and every six months' period until the whole of said corporate bonds herein authorized to be sold are sold and the proceeds disposed of, and the purpose or purposes to which the funds obtained therefor have been applied.

Jurisdiction is retained in the above-entitled matter for the making of such additional and further orders as may be found necessary herein.

Lawton T. Hemans, Chairman, C. L. Glasgow, C. S. Cunningham, Commissioners.

Note.—Security issues authorized.

The Commission has also authorized the following security issues:

Re Michigan Power Co. D-371, January 28th, 1915. Bonds of the par value of \$35,000 to reimburse the treasury of the company for expenditures.

Re North Michigan Water Co. D-715, January 26th, 1915. Bonds P.U.R.'15A.—35.

to the par value of \$10,800 for improvements, additions and betterments to plant.

Re Holland City Gas Company D-847, January 15th, 1915. Bonds of the par value of \$30,000, for the acquisition of the property of the Ottawa County Gas Company.

Re Onaway Electric Light & P. Co. D-887, January 6th, 1915. Bonds of the par value of \$25,000, bearing interest at the rate of 6 per cent per annum, payable semiannually; and deed of trust securing the payment of such bonds for the purchase of real estate.

Re Alpha Lighting Co. D-892, January 6th, 1915. Capital stock to the amount of \$10,000, divided into shares of \$10 each, for the purchase of facilities and for the payment of labor in the construction of an electric lighting and distributing system.

Re United Home Teleph. Co. D-899, January 19th, 1915. Deed of trust and first mortgage, 6 per cent gold bonds to the par value of \$500,000, payable in twenty-five years; a present issue to the extent of \$250,000 to be used to pay outstanding accounts and notes, payable to the approximate amount of \$55,000; the remainder to be used in the payment of labor and purchase of materials in the reconstruction, extension, betterment and improvement of the company's exchange plant and facilities at Muskegon.

Sale price of securities.

Re Michigan Power Co. D-371, January 28th, 1915. An authorized bond issue was ordered to be sold at not less than 80 cents on the dollar par value and accrued interest.

Re North Michigan Water Co. D-715, January 26th, 1915. An authorized bond issue was ordered sold at not less than 90 per cent of par value.

Re Onaway Electric Light & Power Co. D-887, January 6th, 1915. An authorized bond issue was ordered to be sold, at not less than par, for the purchase of real estate.

Re Alpha Lighting Co. D-892, January 6th, 1915. An authorized issue of capital stock was ordered to be sold at not less than par.

Re United Home Teleph. Co. D-899, January 19th, 1915. An authorized bond issue was ordered to be sold at not less than 90 cents on the dollar, par value.

Guaranty of securities.

Re Detroit River Tunnel Co. D-424, January 21st, 1915. The Michigan Central Railroad Company was authorized to guarantee a present issue of \$16,000, par value, of the bonds of the Detroit River Tunnel Company.

NEBRASKA STATE RAILWAY COMMISSION.

IN RE ARLINGTON LIGHT, HEAT, & POWER COMPANY.

[No. 1834.]

Security issues — Value of property covered by.

A light, heat, and power company was authorized to issue \$8,200 of stock where an appraisal by the Commission's engineers showed that the original cost and present value of its properties were in excess of the sum of \$8,000, and where it further appeared that the present owners had actually paid \$8,000 for the properties, and had expended \$200 more for meters.

Depreciation — Maintenance — Amount.

A light, heat, and power company was ordered to set aside annually out of operating income 7 per cent upon an authorized issue of stock as a maintenance and depreciation fund.

[February 1st, 1915.]

APPLICATION for authority to issue stock; granted.

Hall, Commissioner: This is an application made to the Commission pursuant to § 10,709, Cobby's Annotated Statutes of 1911,—“An Act Regulating the Issuance of Stocks, Bonds, and Other Forms of Indebtedness of Common Carriers and Public Service Corporations, and Providing Penalties for the Violation Thereof.” In force July 1, 1909.

The applicant herein was incorporated under and by virtue of the laws of the state of Nebraska on the 10th day of April, 1913, with an authorized capitalization of \$25,000, divided into shares of the par value of \$100 each. A certified copy of the articles of incorporation and a copy of the franchise granted to the applicant by the village of Arlington for the use of its streets, alleys, and public grounds upon which said facilities have been constructed have been filed with the Commission. The applicant herein purchased the plant from the former owners, who had previously constructed the same, and a bill of sale for the transfer of the properties has also been filed with the Commission. The properties have been inventoried and evaluated by the engineers of the Commission, and its report is a part of the records in this case. The inventories and values upon the same show that without doubt the original cost of the properties and the present value

of said properties from a physical standpoint are in excess of the amount of the stock applied for. There is no doubt but the applicant herein has paid in cash \$8,000 for the properties for which it is asking a stock issue.

A formal hearing was held in the matter on January 27, 1915. At said hearing it developed that the company had invested \$200 more money in meters, which it now asks to be included in the stock issue, making a total of \$8,200. It developed at the hearing that there should be a maintenance and reserve fund of 7 per cent upon the \$8,200 set aside for said purpose.

The Commission is of the opinion that the amount paid for said properties, based upon the valuations made by the engineering department, is reasonable, and that the issue of the amount of stock applied for herein is necessary to represent said investment by the stockholders of the company.

It is therefore ordered that the said company be and the same is hereby authorized to issue \$8,200 in common stock, said stock to represent the amount of money actually paid for said properties.

It is further ordered that the said company shall set aside annually an amount of money out of its operating income, not less than 7 per cent upon the stock hereby authorized to be issued, as a maintenance and depreciation fund. Said amount shall be used for the maintenance and upkeep of said properties.

It is further ordered that said company shall keep separate, true, and accurate accounts showing the receipt and application in detail of the proceeds of the sale or disposal of stock hereby authorized to be issued, and on or before the 1st day of March, 1915, the company shall make a verified report to the Commission, showing the sale of said stock, the terms and conditions of the same, the money realized therefrom, and the use and application of such money, and said accounts, vouchers, and records shall be open to audit, and may be audited from time to time by accountants and examiners designated for such purpose by the Commission. In like manner, the said company shall keep separate, true, and accurate accounts of the entire operating income of said company, and the application and disbursement of same in detail, and make annual reports of the same to the Commission, that it may be fully advised as to the affairs of said

company, on the 30th day of June of each year, said reports beginning with June 30th, 1915, and on that date annually thereafter.

It is further ordered that this order shall take effect upon the date of the acceptance of all of the provisions herein by said company, and continue in force until otherwise ordered by the Commission, and that within ten days after service upon said company of a copy of this order, said company shall notify the Commission whether the terms of this order are accepted and will be obeyed.

Nebraska State Railway Commission. Henry T. Clarke, Jr.,
Chairman.

Note.—In Re Octavia Teleph. Co. Application—No. 2315, the company was authorized to issue additional stock to the amount of \$200 for the construction of new lines, such stock to be sold for cash and at not less than par.

OHIO PUBLIC UTILITIES COMMISSION.

ANN ARBOR RAILROAD COMPANY

v.

MICHIGAN CENTRAL RAILROAD COMPANY, PERE MARQUETTE RAILROAD COMPANY, AND TOLEDO TERMINAL RAILROAD COMPANY.

[No. 108.]

Railroads — Division of expense — Joint interlocking device.

- A company constructing a new line of railroad, crossing three other railroads at grade, was ordered to pay one half of the total expense of maintaining a joint interlocking device for all, the others being required to pay but one sixth each, under a statute providing that the expense of maintaining an interlocking device at the crossing of a previously constructed railroad by another railroad shall be equally divided between them.

[February 4th, 1915.]

APPLICATION for reconsideration of orders of Commissioner of Railroads and Telephones, with regard to distribution of expense of maintaining joint interlocking device at grade crossing; former orders revoked, new orders entered.

By the **Commission**: This case came on this day to be heard upon the complaint of the Ann Arbor Railroad Company, asking that the Commission reconsider the determination of the commissioner of railroads and telegraphs of the state of Ohio, as evidence by an order, made and entered on the 13th day of October, 1903, distributing one fourth to each of the companies whose tracks entered therein, the maintenance of the interlocking plant erected at the crossings of the several railroads now parties herein at the point, known as Manhattan boulevard, Toledo, Lucas county, Ohio, where one interlocking device jointly governs and controls crossings, at common grade, of the tracks of the Ann Arbor Railroad Company by the tracks of the Toledo Terminal Railroad Company; of the tracks of the Pere Marquette Railroad Company by the tracks of the Toledo Terminal Railroad Company, and of the tracks of the Michigan Central Railroad Company by the tracks of said the Toledo Terminal Railroad Company, and which said apportionment of such expense of maintaining said joint interlocking device was reaffirmed by said commissioner of railroads and telegraphs of the state of Ohio, by an order, by him duly made and entered on the 6th day of January, 1905, approving a rearrangement of said interlocking plant; the answers of the defendants, the Michigan Central Railroad Company, the Toledo Terminal Railroad Company, and the Pere Marquette Railroad Company, and its receivers, Frank W. Blair, Dudley E. Waters, and S. M. Felton; the evidence and exhibits; and the Commission, being fully advised in the premises, finds:

1. That for the purposes of the law, the Toledo Terminal Railroad Company, constructing a new line of railroad, has established and now maintains a crossing, at common grade, with the tracks of the then-existing the Ann Arbor Railroad Company, at Manhattan boulevard, Toledo, Lucas county, Ohio.

2. That said the Toledo Terminal Railroad Company, constructing a new line of railroad, has established and now maintains a crossing, at common grade, with the tracks of the then-existing the Pere Marquette Railroad Company, now operated by said Frank W. Blair, Dudley E. Waters, and S. M. Felton, as receivers, at said Manhattan boulevard, Toledo, Lucas county, Ohio.

3. That said the Toledo Terminal Railroad Company, constructing a new line of railroad, has established and now maintains a crossing, at common grade, with the tracks of the then existing the Michigan Central Railroad Company at said Manhattan boulevard, Toledo, Lucas county, Ohio.

4. That § 598 of the General Code specifically provides that the expense of maintaining an interlocking device constructed at the crossing of a previously constructed railroad by another railroad shall be divided equally between such railroads so crossing.

5. That the action of said the Toledo Terminal Railroad Company, the Ann Arbor Railroad Company, the Pere Marquette Railroad Company, and the Michigan Central Railroad Company in constructing, and, for convenience, maintaining and operating, one tower controlling jointly the interlocking devices provided for the protection of the said three grade crossings aforesaid, in nowise alters the relation of said the Toledo Terminal Railroad Company as the constructor and maintainer of said three separate grade crossings as set forth in said findings numbered No. 1, No. 2, and No. 3, hereinabove set out. It is therefore

Ordered, that the expense of maintaining the interlocking device constructed and maintained at the crossing, at common grade, of the tracks of the Toledo Terminal Railroad Company with the tracks of the Ann Arbor Railroad Company at Manhattan boulevard, Toledo, Lucas county, Ohio, shall be borne equally between said the Toledo Terminal Railroad Company and said the Ann Arbor Railroad Company. It is further

Ordered, that the expense of maintaining the interlocking device constructed and maintained at the crossing, at common grade, of the tracks of the Toledo Terminal Railroad Company with the tracks of the Pere Marquette Railroad Company at Manhattan boulevard, Toledo, Lucas county, Ohio, shall be borne equally between said the Toledo Terminal Railroad Company and said the Pere Marquette Railroad Company. It is further

Ordered, that the expense of maintaining the interlocking device constructed and maintained at the crossing, at common grade, of the tracks of the Toledo Terminal Railroad Company with the tracks of the Michigan Central Railroad Company at Man-

hattan boulevard, Toledo, Lucas county, Ohio, shall be borne equally between said the Toledo Terminal Railroad Company and said the Michigan Central Railroad Company. It is further

Ordered, that said orders, made and entered on the 13th day of October, 1903, and the 6th day of January, 1905, respectively, by the commissioner of railroads and telegraphs of the state of Ohio, in so far as the same fix and determine the division of the expense of maintaining the interlocking device embracing the said crossings of said the Toledo Terminal Railroad Company with the tracks of said the Ann Arbor Railroad Company, with the tracks of said the Pere Marquette Railroad Company and with the tracks of said the Michigan Central Railroad Company, respectively, at Manhattan boulevard, Toledo, Lucas county, Ohio, be and the same are hereby revoked, rescinded, and held for naught. It is further

Ordered, that so long as said joint interlocking device, embracing said three crossings of said the Toledo Terminal Railroad Company with the tracks of said the Ann Arbor Railroad Company, said the Pere Marquette Railroad Company, and said the Michigan Central Railroad Company, respectively, at said Manhattan boulevard, Toledo, Lucas county, Ohio, shall be retained, the division of the expense of maintaining said interlocking device shall be, one half (50 per centum) to said the Toledo Terminal Railroad Company, one sixth ($16\frac{2}{3}$ per centum) to said the Ann Arbor Railroad Company, one sixth ($16\frac{2}{3}$ per centum) to said the Pere Marquette Railroad Company, and one sixth ($16\frac{2}{3}$ per centum) to said the Michigan Central Railroad Company.

The Public Utilities Commission of Ohio. O. H. Hughes, Chairman, C. C. Marshall, E. W. Doty, Commissioners.

OHIO PUBLIC UTILITIES COMMISSION.

NEW YORK COAL COMPANY

v

THE HOCKING VALLEY RAILWAY COMPANY.

[No. 91.]

Commission procedure — Intervention — Appeal.

An application to vacate an order of the Commission, and suspend

the effective date thereof, and to be allowed to intervene in the cause, will be dismissed on motion, where an appeal from the order has been prosecuted to the common pleas court and the cause is pending in the supreme court.

[January 9, 1915.]

APPLICATION to vacate and rescind order, and to intervene in the cause; dismissed.

By the **Commission**: The Pennsylvania Company having, on the 16th day of November, 1914, filed its application to vacate and rescind the order entered herein by the Railroad Commission of Ohio, now the Public Utilities Commission of Ohio, on the 27th day of June, 1911, and to be permitted to intervene in this cause and be made a party thereto, with the right to have notice of and to appear in the taking of testimony, produce and cross-examine witnesses, and be heard by brief and oral argument, and that, pending the determination of the matters and things involved in said application, the effective date of said order of June 27th, 1911, be suspended; and the New York Coal Company having, on the 16th day of December, 1914, filed its motion for an order dismissing said application, and this case having come on to be heard on said motion on the 28th day of December, 1914, and said motion having on said day been heard and argued by counsel; and it appearing that the said the Hocking Valley Railway Company duly prosecuted its appeal to the common pleas court of Franklin county, Ohio, from said order of the Railroad Commission of Ohio, now the Public Utilities Commission of Ohio, entered on the 27th day of June, 1911, and that said cause is now undisposed of and pending in the supreme court of Ohio, and the Commission, being fully advised in the premises, finds the grounds of said motion, and each of them, well taken, and does therefore sustain the same. It is therefore ordered that said application, and each and every part thereof, be and the same is hereby dismissed, and the relief prayed for therein be, and the same is hereby, denied in whole and in part.

And it appearing, further, that the Detroit, Toledo, & Ironton Railroad Company, the Wheeling & Lake Erie Railroad Company, and William M. Duncan, receiver for said the Wheeling & Lake Erie Railroad Company, and the Baltimore & Ohio Railroad Company, have filed herein applications similar to the said

application of the Pennsylvania Company, and that the same issues are made as are made by the said application of the Pennsylvania Company; and it appearing, further, that each and all of said Detroit, Toledo, & Ironton Railroad Company, the Wheeling & Lake Erie Railroad Company, and William M. Duncan, receiver for said ~~the~~ Wheeling & Lake Erie Railroad Company, and the Baltimore & Ohio Railroad Company, was served with notice of the hearing on the said motion of the New York Coal Company, and appeared by counsel at and participated in said hearing, and each and all of said companies and the receiver for said the Wheeling & Lake Erie Railroad Company consenting that their said applications be considered and disposed of at the hearing on said motion of the New York Coal Company, and the rights of each and all of said companies and the receiver for said the Wheeling & Lake Erie Railroad Company under their said applications be decided and determined by the decision of the Commission on said motion,—it is therefore ordered that the said applications of the Detroit, Toledo, & Ironton Railroad Company, the Wheeling & Lake Erie Railroad Company, and William M. Duncan, receiver for the Wheeling & Lake Erie Railroad Company, and the Baltimore & Ohio Railroad Company, be, and the same are hereby, dismissed, and the relief therein prayed for be, and the same is hereby, denied in whole and in part.

The Public Utilities Commission of Ohio, O. H. Hughes, Chairman, C. C. Marshall, E. W. Doty, Commissioners.

OHIO PUBLIC UTILITIES COMMISSION.

IN RE APPLICATION OF THE CHARDON WATERWORKS COMPANY FOR AUTHORITY TO ISSUE BONDS.

[No. 416.]

Security issues — Overhead expenses — Construction — Equipment.

A waterworks company was authorized to issue capital stock and bonds to a specified amount for the payment of organization, legal and engineering expenses, and for the construction and equipment of a waterworks system.

Security issues — Capital stock — Sale price.

An authorized issue of capital stock of the total par value of \$20,000 was ordered sold at the highest price obtainable, but at not less than par.

Security issues — Bonds — Sale price.

An authorized issue of bonds to the sum of \$26,500 was ordered sold, at the highest price obtainable, but at not less than 90 per cent of their par value.

[February 10, 1915.]

APPLICATION for authority to issue securities: granted.

By the **Commission**: This matter came on this day, after due notice, to be heard upon the amended petition, filed January 21, 1915, of the Chardon Waterworks Company, as further amended, by interlineation, praying for the consent and authority of the Public Utilities Commission of Ohio to the issue, by said the Chardon Waterworks Company, of its capital stock of the total par value of \$20,000, and its first mortgage, twenty year, 6 per cent gold bonds of the total principal sum of \$26,500, the proceeds to be used for the payment of petitioner's organization, legal and engineering expenses, and the construction and equipment of a waterworks system in the village of Chardon, Ceauga county, Ohio, as fully set out in said amended petition and the exhibit attached thereto; the evidence and exhibits.

After considering the pleadings, hearing the evidence, and examining the exhibits, and being fully advised in the premises, and it appearing that the proceeds of said stocks and bonds are to be used for the construction, completion, extension, and improvement of petitioner's plant, system, and facilities, the Commission is satisfied that the prayer of said amended petition, as further amended by interlineation, should be granted. It is therefore,

Ordered, That said the Chardon Waterworks Company be, and it hereby is, authorized to issue its capital stock of the total par value of \$20,000, and its first mortgage, twenty year, 6 per cent gold bonds of the total principal sum of \$26,500, and that said capital stock and said bonds be sold for the highest price obtainable, but for not less than the par value of said capital stock, and not less than 90 per cent of the par value of said bonds, respectively, it being the opinion and finding of the Commission that the money to be secured by the issue of said capital stock

and said bonds is reasonably required for the proper purposes of said corporation. It is further

Ordered, That the proceeds arising from the sale of said capital stock and said bonds be, by said the Chardon Waterworks Company, devoted to and used for the following purpose, and no other, to wit: The payment of the organization, legal and engineering expenses, of said the Chardon Waterworks Company, and the construction and equipment of a waterworks system in the village of Chardon, Ceauga county, Ohio, as fully set out in a detailed estimate attached to the amended petition filed herein on the 21st day of January, 1915, and marked for identification, "exhibit D," which said "exhibit D" is hereby made a part of this order by reference. It is further

Ordered, That the excess of the total of \$26,500 of the bonds of said the Chardon Waterworks Company herein authorized to be issued and disposed of, over and above the sum of \$20,000 the amount of the capital stock of said the Chardon Waterworks Company herein authorized to be issued and disposed of, and the issue and disposition of such excess in the manner and on the terms and conditions hereinbefore provided, be, and the same hereby are, approved, consented to, and authorized. It is further

Ordered, That said the Chardon Waterworks Company make verified report to the Commission, as follows: Upon the issue and sale of said capital stock and said bonds, or any part of either or both, the fact of such issue and sale, the terms and conditions of sale, and the amounts realized therefrom, which shall be the highest price obtainable, but which shall not be less than the par value of said capital stock nor less than 90 per cent of the par value of said bonds, on or before the 15th day of April, 1915, for the period ending March 21, 1915, and thereafter at quarterly intervals, the disposition and use made of the proceeds of said capital stock and said bonds, setting forth in reasonable detail the purposes for which said proceeds have been expended,—such reports to be made until all of the proceeds of said capital stock and said bonds have been issued and disposed of, and the proceeds thereof expended pursuant to the terms and conditions of this order.

The Public Utilities Commission of Ohio, O. H. Hughes, Chairman, C. C. Marshall, E. W. Doty, Commissioners.

OHIO PUBLIC UTILITIES COMMISSION.

IN RE APPLICATION OF UNITED TELEPHONE
COMPANY.

[No. 422.]

Order — Approval of security issues — Preferred stock.

A telephone company was authorized to issue its 6 per cent preferred capital stock, it appearing that the same was reasonably required for the reimbursement of its treasury for money actually expended from income for the acquisition of property, and the construction, completion, extension, and improvement of its system and facilities.

Order — Approval of security issues — Conditions.

A telephone company was authorized to issue its 6 per cent preferred capital stock on condition that the same be sold for the highest price obtainable, but for not less than the par value thereof.

Order — Approval of security issues — Effect — Property value.

The authority of the Commission for the issuance of preferred capital stock of a telephone company is not to be considered as a finding by the Commission of the value of the property for the capitalization of the purchase price for which a portion of such preferred capital stock is authorized to be issued, either as to the whole of said property, or of any part thereof, nor as an acquiescence in the values placed upon said property by the parties, nor as an approval of the consideration stipulated.

Order — Approval of security issues — Effect — Rates.

The authority of the Commission for the issuance of preferred capital stock of a telephone company is not to be construed as an approval by the Commission of the rates now charged for service at any of its stations, nor as a finding by the Commission that such rates are reasonable or not excessive or not discriminatory.

[February 3d, 1915.]

APPLICATION for authority to issue preferred capital stock; granted.

By the Commission: This matter came on this day to be heard, after due notice, upon the application, filed January 26, 1915, of the United Telephone Company, a corporation organized and existing under and by virtue of the laws of the state of Ohio, with its office and principal place of business at Bellefontaine, Ohio, praying for the consent and authority of the Public Utilities Commission of Ohio to the issue, by said the United Telephone Company, of its 6 per cent preferred capital stock of

the total par value of \$6,125, the proceeds to be used: (a) The sum of \$3,225 to reimburse petitioner for the purchase price, by it paid for the property of the Union County Farmers' Telephone Company purchased and acquired at receiver's sale, held subject to the order of the court of common pleas of Union county, Ohio, at Marysville, Ohio, on the 6th day of January, 1915; (b) the sum of \$1,100 for labor necessary to reconstruct the lines of said property into the system of petitioner; and (c) the sum of \$1,800 to reimburse petitioner for moneys actually expended from its income for the construction of lines from West Liberty to Mingo and Kennard,—as fully set out in said petition and the exhibits attached thereto; the evidence and exhibits.

After considering the pleadings, hearing the evidence, and examining the exhibits, and being fully advised in the premises, and it appearing that the proceeds of said preferred capital stock are to be used for the reimbursement of petitioner's treasury for moneys actually expended from income for the acquisition of property and the construction, completion, extension, and improvement of petitioner's system and facilities, and for the construction, completion, extension, and improvements of petitioner's system and facilities, the Commission is satisfied that the prayer of said petition should be granted. It is therefore

Ordered, That said the United Telephone Company, of Bellefontaine, Ohio, be, and it is hereby authorized to issue its 6 per cent preferred capital stock of the total par value of \$6,125, and that said preferred capital stock be sold for the highest price obtainable, but for not less than the par value thereof, it being the opinion and finding of the Commission that the money to be secured by the issue of said preferred capital stock is reasonably required for the proper purposes of said corporation. It is further

Ordered, That the proceeds arising from the sale of preferred capital stock be, by said The United Telephone Company, devoted to and used for the following purposes, and no other, to wit:

(a) The reimbursement of petitioner's treasury for money actually expended therefrom as the purchase price of the property of the Union County Farmers' Telephone Company, purchased and acquired by petitioner at receiver's sale, held pursuant to an order of the court of common pleas of Union county,

Ohio, at Marysville, Ohio, on the 6th day of January, 1915, as said property is fully set out and described in an inventory and appraisalment thereof attached to the petition herein, which said inventory and appraisalment is hereby made a part of this order by reference,\$3,225

(b) The expense of labor necessary to reconstruct the lines of said property into the system of petitioner, as the same is more fully described in the transcript of the testimony offered and introduced in evidence on the hearing of this matter, which said transcript, in so far as it describes and enumerates such proposed expenditure, is hereby made a part of this order by reference,\$1,100

(c) The reimbursement of petitioner's treasury for money actually expended therefrom for the construction of its lines from West Liberty to Mingo and Kennard, as the same is fully set out in a detailed statement of the cost of constructing said lines, attached to the petition herein, which said statement of such cost of constructing said lines is hereby made a part of this order by reference,\$1,800

It is further

Ordered, That said the United Telephone Company make verified report to the Commission as follows: Upon the issue and sale of said preferred capital stock, or any part thereof, the fact of such issue and sale, the terms and conditions of sale, and the amounts realized therefrom, which shall be the highest price obtainable, but which shall not be less than the par value thereof, on or before the 15th day of April, 1915, for the period ending March 31, 1915, and thereafter at quarterly intervals, the disposition and use made of the proceeds of said preferred capital stock, setting forth in reasonable detail the purposes for which said proceeds have been expended, such reports to be made until all of said preferred capital stock has been issued and disposed of and all the proceeds thereof expended pursuant to the terms and conditions of this order. It is further

Ordered, That nothing herein shall be considered as a finding by the Commission of the value of the property, for the capitalization of the purchase price for which a portion of said preferred capital stock is herein authorized to be issued, either as to the whole of said property, or of any part, nor as an acquiescence in

the values placed upon said property by said parties, nor as an approval of the consideration stipulated. It is further

Ordered, That nothing herein shall be construed as an approval by the Commission of the rates now charged for service by said parties at any of their stations, or in any municipality, or elsewhere, nor as a finding by the Commission that said rates are reasonable, and not excessive, and not discriminatory. It is further

Ordered, That nothing herein shall be construed as a finding by the Commission that the service of said companies, at any of their stations, or in any municipality, or elsewhere, is adequate, efficient or sufficient.

The Public Utilities Commission of Ohio, O. H. Hughes, Chairman, C. C. Marshall, E. W. Doty, Commissioners.

Note.—Security issues authorized.

The Commission has also granted the following applications for security issues:

Re Farmers' Teleph. Co. of Sidney, Ohio, No. 168, January 15, 1915. Common capital stock of the total par value of \$76,000, for the payment and discharge of petitioner's bonded indebtedness of \$16,100; payment and discharge of outstanding accommodation notes, \$25,750; payment and discharge of outstanding time notes, \$6,830; payment and discharge of open accounts, \$1,005.72; the construction of additions, extensions, improvements, and betterments of plant, \$26,314.28.

Re Citizens Light & P. Co. of Millersburg, Ohio, No. 355, January 22, 1915. Common capital stock of the total par value of \$16,000, and first mortgage, 6 per cent bonds of the total sum of \$10,000, the proceeds of the said common capital stock to be used for the payment of the purchase price of the property, and the proceeds arising from the sale of the bonds to be devoted to the construction of additions, extensions, improvements, and betterments.

Re Toledo Terminal R. Co. No. 363, February 2, 1915. First mortgage, $4\frac{1}{2}$ per cent gold coupon bonds of the total sum of \$300,000. The proceeds arising from the sale of a portion of the said bonds to be paid to the original proprietary companies in reimbursement for moneys advanced for the construction of additions, extensions, improvements, and betterments; the proceeds from the remainder to be devoted to the acquisition of property and material, and for the construction of additions, extensions, improvements, and betterments.

Re Millersburg, W. & O. Teleph. Co. No. 394, January 15, 1915. Common capital stock of the total par value of \$68,500. Proceeds to

be devoted to the payment and discharge of \$25,000 of outstanding bonded indebtedness; for the payment and discharge of indebtedness incurred in the construction, completion, extension, and improvement of the plant and system, \$18,600; for the reimbursement of petitioner's treasury for moneys actually spent for improvements and betterments, \$24,900.

Re St. Marys Gas Co. No. 408, January 7, 1915. First mortgage, 5 per cent twenty-year bonds of the total sum of \$100,000 to be exchanged at par for petitioner's outstanding 6 per cent bonds of the same amount which matured November 1, 1914.

Re Wapakoneta Natural Gas Co. No. 409, January 7, 1915. First mortgage, 5 per cent twenty-year bonds of the total sum of \$100,000, to be exchanged at par for outstanding 6 per cent bonds of the same sum which matured November 1, 1914.

Re Marion Water Co. No. 413, January 29, 1915. Promissory notes of the total sum of \$60,000, bearing interest from date of issue at a rate not exceeding 6 per cent per annum; proceeds to be devoted to the purchase of material and construction, completion, extension, and improvement of petitioner's plant and facilities.

Re Athens County Home Teleph. Co. No. 417, January 21, 1915. Six per cent for preferred capital stock of the total par value of \$3,700; proceeds to be devoted to the payment and discharge of obligations incurred in the construction, additions, and improvements in the betterments of petitioner's plant and system during the year 1914.

Re Cleveland, C. C. & St. L. R. Co. No. 418, January 20, 1915. Trustee's certificates to the amount of \$1,725,000; proceeds to be devoted to the payment of 80 per cent of the purchase price of certain equipment.

Re Columbus R. Power & Light Co. No. 490, February 4, 1915. Preferred stock to the sum of \$516,300, series A, and preferred stock to the amount of \$210,500, series B, in full and final payment for the property, plants, and business, franchise, rights, and privileges of the Columbus Light, Heat & Power Company, in accordance with the finding and order Re Columbus R. Power & Light Co. No. 489, February 4, 1915.

Sale price of securities.

In the following cases the Commission ordered the securities authorized to be sold for the highest price obtainable, but for not less than par:

Re Farmers' Teleph. Co. No. 168, January 15, 1915; Re Citizens Light & P. Co. No. 355, January 22, 1915; Re Millersburg, W. & O. Teleph. Co. No. 394, January 15, 1915; Re Marion Water Co. No. 413, January 29, 1915; Re Athens County Home Teleph. Co. No. 417, January 21, 1915; in Re Toledo Terminal R. Co. No. 363, February 2d, 1915, bonds to the sum of \$300,000 were authorized to

be disposed of at the highest price obtainable, but for not less than 85 per cent of its par value; In Re Cleveland, C. C. & St. L. R. Co. No. 418, January 20, 1915, authorized trustee's certificates were ordered sold at not less than $94\frac{1}{2}$ per cent of the par value thereof.

In Re Mahoning County Light Co. ante, 74, the Commission held that it could not withhold consent to an issuance of stocks and bonds by an electric light and power company merely on the ground that the field was already occupied by a company furnishing adequate service.

SOUTH DAKOTA RAILROAD COMMISSION.

IN RE APPLICATION OF DAKOTA CENTRAL TELEPHONE COMPANY.

[No. F—98.]

Return — Operating expenses — Accounting — Rural party lines — Rates.

No part of the operator's salary or office rent of a local exchange performing switching service for rural party lines owned by the same company is chargeable as an operating expense against such lines already charged with a statutory fee of 25 cents per month upon each instrument for such service.

Return — Amount allowed.

An allowance for dividends of 7 per cent of the present value of telephone rural party lines was made by the Commission, in computing the reasonable expenses to be charged against such lines in a valuation for rate purposes.

Depreciation — Allowance — Rural telephone lines.

An allowance for depreciation of 7 per cent of the cost of reproduction of telephone rural party lines was made by the Commission in computing the reasonable expenses to be charged against such lines in a valuation for rate purposes.

Rates — Increase — Rural telephone party lines.

The Commission allowed an advance in telephone rural party-line rates from \$18 per annum, with a \$6 discount for payment in advance, to \$1.25 per month or \$15 per annum, payable quarterly in advance, it appearing from a valuation of the property and a computation of revenues and proper expenses that such advance was reasonable.

[January 26, 1915.]

APPLICATION to increase telephone rural party-line rates; granted.

By the Commission: In this case the Dakota Central Tele-

phone Company filed an application to increase its telephone rental rate on its rural lines connected with its local exchange at Sisseton. At the present time the rate filed in this office for rural telephone rental of the Sisseton exchange is \$18 per annum, with a discount of \$6 per annum if paid in advance. In other words, if the rental rate be paid annually in advance, the rate is \$12, whereas, if not paid in advance, the rate is \$18. There is very little evidence in the record in this case either as to the valuations of the applicant's rural telephone lines in the vicinity of Sisseton, and less evidence as to their operating expenses. An exhibit was filed by the applicant purporting to show an inventory of its plant, a detail of the unit values used, and on page 4, what is supposed to represent a financial statement showing operations for the year ending December 31, 1913, in which is set down some items of expense and revenue, but as to their application to the case in question, there is no information contained either in the exhibit or in the record; and from the very nature of the case some of the items included within the statements certainly cannot be included within the charges, for operating expenses against the rural party lines. In addition to the inventory which was filed as a part of this exhibit, this Board made an examination of the lines, and has completed a valuation of the plant, from which the Commission finds that the cost of reproduction of these rural party lines radiating from the Sisseton exchange is approximately \$13,706.13, and that the present value of the plant is about 75 per cent of its reproductive value, or of a value of about \$10,279.60.

While it may be that some of the items set down as expenses chargeable against these rural party lines contain items that are proper charges against them, such lines, for lack of any explanation of these figures in the record, the Commission is unable to determine from the evidence in the case what the actual operating expenses were for the period ending December 31, 1913. Under our statute a fee of not exceeding 25 cents per month for each telephone instrument is allowed for switching rural party lines at a local exchange; and if this fee is applied in the instant case on the theory that for each telephone instrument—and there are 188 on the rural party lines—a charge is to be made against these lines of 25 cents per month, we have

an operating item chargeable against these lines of \$554 payable to the local exchange annually. This, however, cannot be included in the items of expense, if there is also to be included the item of \$259.56 for operator's wages; for if there is to be credited to the local exchange 25 cents for each rural telephone instrument switched in the local exchange, surely the operator's salary may not likewise be included as a charge against the rural party lines. There is also included an item for office rent of \$90, presumably on the theory—there is no other advanced in the record—that part of the rent of the office for the Sisseton exchange is chargeable to the rural party lines. If the rural party lines are paying for all the service in the switching fee of 25 cents per month, then this item of \$90 for office rent is not a proper charge.

If it be assumed, however, that a reasonable allowance

for current repairs for these lines per annum is ..	\$200.00
and that they should be charged with switching 188	
phones at \$3 per annum	564.00
that the taxes paid were	176.26
that 7 per cent is a reasonable amount to be computed	
on the present worth of the plant for the payment	
of dividends, we have	719.57
and 7 per cent of the cost of reproduction is a reason-	
able allowance for depreciation, we have an item of	959.43

making a total operating expense of \$2,619.26

If the revenues be computed on the basis of \$1.25 per month, or \$15 per annum for 188 phones, which appears to be the present capacity of the plant, we have an operating revenue of \$2,820, and after deducting the estimated operating expenses of \$2,619.26, we have a surplus of \$200.74. The Commission also finds a rate of \$1.25 per month or \$15 per annum for the rental of rural party-telephone lines is a fair and reasonable rate in this instance, and an order will be made and entered in this proceeding permitting said rate to become effective as of January 1, 1915.

By order of the board, T. E. Cassill, Secretary.

Note.—The Commission in its order provided that the rate of \$15 per annum be payable quarterly in advance.

WISCONSIN RAILROAD COMMISSION.

JOHN COADY ET AL.

v.

LA CROSSE TELEPHONE COMPANY.

[No. 398.]

Rates — Rural telephone lines — Free exchange service.

A rural telephone rate of \$1.50 per month is not unreasonable where, in addition to rural and local exchange service, the subscribers receive free toll service to another exchange connecting them with some 3,300 installations.

Rates — Optional rate — Rural telephone lines.

A telephone company was ordered to put into effect an optional schedule of \$1.25 per month for rural line telephone service, with a toll charge of 5 cents to and from another exchange, in place of a rate of \$1.50 per month with free service, when adopted by a majority vote of the subscribers on any line, such election to be at the beginning of any quarter and to be effective for at least two quarters following.

Service — Pay stations — Nickel telephones.

Telephone pay stations were ordered to be discontinued in order to avoid discrimination among subscribers, and to save investment in equipment, and to save the time of operators in supervising, where it appeared that only a small part of the business telephones were equipped with coin boxes, and that these returned no revenue to the company.

Service — Telephones — Busy lines.

A telephone company was ordered to construct an additional trunk line, where it appeared that 10 per cent of trunk calls outgoing from a certain exchange were not completed during the busy hour on account of busy trunk lines.

[February 4, 1915.]

COMPLAINT as to unreasonable telephone rates and insufficient service; relief granted in part.

The appearances are set out in the opinion.

By the Commission: On March 7, 1914, a complaint was filed against the La Crosse Telephone Company, signed by subscribers resident upon rural lines of the respondent company located at Onalaska. The allegations set forth by the complaint were that the rate paid for telephone service on these Onalaska rural lines was excessive, and that the service rendered on one of the lines was insufficient.

Preliminary notices having been duly served, the matter came

to hearing on June 5, 1914, at the city hall in La Crosse. Appearances were John Coady as a petitioner, and W. F. Goodrich for the La Crosse Telephone Company.

The answer of the La Crosse Telephone Company to the complaint was read into the record at the hearing. It set forth in substance the nature of the exchange at Onalaska, showed that the rates in effect were for unlimited service in La Crosse and Onalaska, that the cause of complaint against the rate lay in the fact that the first complaining subscribers, the Sand Lake Coulee subscribers, were located upon a line which was purchased from the La Crosse Interurban Company and upon which the rate of the latter company had been \$1.25 per month until raised by the purchasing company, the La Crosse Telephone Company, to \$1.50 per month in order to conform with their existing schedule. The answer also showed that a meeting of the subscribers affected had been called at the instance of the company at which, no understanding having been reached, the company asked that the whole matter be laid before the Commission.

The testimony of John Coady and other interested petitioners at the hearing went to the point of rates and service, the contention being that the \$1.50 rate was too high, and that, should the \$1.25 rate be restored, a number of former subscribers would be regained, to the benefit of the company. The complaint against service seemed to be against occasional breakdowns along the line, rather than against the general quality of the service.

Another matter not covered by the complaint was heard by consent of the parties at the hearing. This matter related to the refusal of the La Crosse Telephone Company to install any telephone save a pay telephone, similar to those located in other business places, in the hardware store of the Onalaska Hardware Company, Mr. A. B. Robbins, proprietor. The latter party appeared in person to protest this action. The situation developed by the testimony showed that the company had installed these pay phones in some of the business places in order to regulate the excessive number of calls for La Crosse, coming in over subscribers' phones by nonsubscribers. The device imposed no extra cost upon the subscriber, indeed cheapened his service, as the calls paid for at 5 cents each went toward the

\$2.50 monthly phone rent. The company maintains three trunk lines into La Crosse, but these had been found inadequate to handle the La Crosse-Onalaska business.

The Complaint of Rural Onalaska Subscribers.

Rural Rates at Onalaska.

An attempt to solve the problem through numerical computations would, in this case, be almost futile, because of the fact that the financial operations of the exchanges at La Crosse and Onalaska are not reported separately. Unlimited service has hitherto been rendered to all the subscribers, both La Crosse and Onalaska, through all the exchanges of the company, and for this reason the company has been excused from reporting the two exchanges separately. Observation has shown, however, that a good quality of service to rural subscribers can seldom be furnished at less than \$1.25 per month, and that when free exchange service to a large number of subscribers is furnished, \$1.50 per month is not usually unreasonable. The Onalaska rural subscribers receive free service to La Crosse, as well as to Onalaska. As there are some 3,300 installations on the lines of the La Crosse Telephone Company, the rate of \$1.50 per month is not thought unreasonable, considering the service to which a subscriber is entitled.

It may so happen that certain of the rural lines would do without La Crosse service if the rate for local service were thereby reduced. This situation is not indicated, however, by traffic studies made at different times by representatives of the Commission and by the company. These studies indicate that the average number of calls per phone from the Onalaska rural lines to La Crosse is seldom less than one per day and often averages two. Hence it is doubtful if a reduction in the monthly rate with an added toll rate of 5 cents per call to La Crosse would be favored by a majority of the subscribers on any rural line. This alternative or optional rate appears, notwithstanding, to be the only solution available for the subscribers. Such an optional rate would provide a monthly charge of \$1.25 per phone for Onalaska service, with a toll charge of 5 cents for all calls into La Crosse, and a corresponding toll charge for La

Crosse subscribers calling Onalaska rural lines having this form of service.

This form of schedule could only be adopted by a majority vote of the subscribers on any one line, and, when so elected, it ought to stand as an election for the ensuing six months.

It may be argued that the election of such a rate would be an unjust imposition upon the rights of a minority subscriber whose business demanded frequent calls to La Crosse, but on such a rural line the service which gives the greatest benefit to the greatest number of subscribers probably should prevail.

The standard rate for this service will remain at \$18 per year. As before stated, this is not considered an unreasonable rate for such service as is now offered. The alternative rate suggested will merely open a way for those groups of rural subscribers who do not care for the unlimited La Crosse service.

Service.

The testimony taken at the hearing indicates no general complaint against the service rendered on these rural lines out of Onalaska. There is some complaint against occasional delays in repairing breakdowns, but the weight of testimony does not bear heavily on this point. It must be borne in mind that an equal standard of maintenance of rural lines is more expensive than for urban lines.

The Onalaska Pay Station Complaint.

Some mention of this situation has been made in an opening paragraph. A few additional facts will be necessary to clearly explain the matter.

The situation was investigated by a representative of the Commission, and the following is quoted from a report made of that investigation:

"About two years ago, complaints were filed with the La Crosse Telephone Company relative to the poor class of service provided between Onalaska and La Crosse. A traffic study was made by the company, and it appears that the number of calls outgoing Onalaska for La Crosse were excessive. These calls were handled over three clear metallic trunk lines between the two exchanges. Further observations seemed to convince the telephone officials that the business phones in Onalaska generated

more than a reasonable amount of traffic. Figures of this traffic study were not available.

"The La Crosse Telephone Company officials, in order to provide adequate service and restrict the use of phones to subscribers only, solicited the business men of Onalaska and obtained their consent to install nickel telephones. The contention was that the abnormal traffic conditions were due to the use of the phones by nonsubscribers, who usually stopped in some store and used the phone free. The arrangement agreed upon between the telephone company and the business man was that every call to La Crosse would cost a nickel, which at the end of the month would be refunded to the subscriber of the phone. The regular rate of \$2.50 was to apply the same as before. The installation of the phones decreased the Onalaska outgoing calls 50 per cent according to the statement of the telephone officials."

Eight of these phones were installed at that time. The state of affairs as outlined above continued without disagreements until the refusal of Mr. Robbins to accept a pay station in his store. This refusal occurred in the early part of May, 1914, and the matter was taken up at the hearing. Subsequently, the investigation mentioned above was ordered and made.

Again quoting therefrom:

"On July 28, 1914, a traffic study was made of the calls entering and leaving the Onalaska switchboard. This study embraced a period of twenty-four consecutive hours, and was made under normal conditions of weather and trend of affairs. The results of this study may be summed up as follows:

1.	Total number of calls handled (24 hours)	906
2.	" " " " completed "	805
3.	" " " toll calls completed (24 hours)	6
4.	" " " calls completed (busy hour)	81
5.	" " " trunk calls completed (busy hour)	54
6.	" " " busy backs (busy hour)	6
7.	" " " calls from La Crosse (24 hours)	227
8.	" " " calls to La Crosse (24 hours)	192
9.	" " " Onalaska (business) to La Crosse (24 hrs.)	53
10.	" " " La Crosse to Onalaska (business) (24 hrs.)	49
11.	" " " Onalaska (residence & rural) to La Crosse	137
12.	" " " La Crosse to Onalaska (residence & rural)	148

From this study and accompanying observations, the following facts are established:

1. Fifty-four per cent of the completed trunk calls were incoming Onalaska and 46 per cent outgoing.

2. Fifty-two per cent of the completed calls involved the use of trunk lines.

3. Nineteen per cent of the business calls outgoing Onalaska came from pay stations. This is only 5 per cent of the total calls outgoing Onalaska.

4. Eighty-one per cent of the business calls outgoing Onalaska came from stations not supplied with nickel boxes. This amounts to 22 per cent of the total outgoing calls.

5. Approximately 73 per cent of the total outgoing calls are chargeable to rural and residence phones.

6. Trunk lines are used to transmit toll messages.

7. During the busy hour 10 per cent of the calls for trunks to La Crosse were not completed on account of "lines busy."

8. Service furnished by Onalaska exchange is adequate.

9. Service furnished to pay stations is somewhat hindered due to the fact that the operator gets the called party on the phone before the connection is made. This is one of the complaints made by the subscriber having pay stations.

10. Only 8 of the 24 business phones are equipped with coin boxes.

11. La Crosse business phones are not equipped with coin collectors.

12. Discrimination exists between business phones in Onalaska and also between La Crosse and Onalaska business phones.

"The result of the traffic study shows that the trunking conditions are becoming inadequate for good service at the present time. During the busy hour 10 per cent of the calls were busy backs in Onalaska, and it is only fair and logical to assume that the same number or more existed in the La Crosse exchange.

"Therefore, regardless of the disposition of the nickel phone case, this department would recommend that an additional trunk circuit be erected to accommodate existing traffic and the natural increase of traffic developing with the growth of the exchange. At the present time there are only three circuits which must accommodate all the traffic including toll messages."

From the foregoing report it seems that either all business houses should have pay-station service, or that it should be abolished altogether.

Against the first proposition, it may be argued that pay-station

service is slower and more inconvenient than other service. Another point against it is the cost of installing the additional stations. The cost would exceed the cost of another trunk line into La Crosse. This latter expense would be approximately \$150.00. The use of pay stations leads to a feeling of dissatisfaction among subscribers, and the net result is that troubles usually encountered with nickel phones tend to condemn their use in a small town.

The abolition of all pay-stations would in this case eliminate discrimination among subscribers, reduce the amount of time necessarily spent by the operator in supervising these calls and save an investment in equipment which does not in this case return any revenue to the company.

It is quite true that the company is under no obligation to serve non-subscribers free, and the toll rate now in force for non-subscribers' calls between Onalaska and La Crosse is ample protection if properly enforced. Some of the calling by non-subscribers can probably be eliminated by the co-operation of subscribers with the company.

It is the opinion of the Commission that the La Crosse Telephone Company should abolish these pay-stations.

Service: Onalaska-La Crosse.

The traffic study, the results of which are tabulated on a preceding page, shows that an additional trunk line is required between Onalaska and La Crosse. As already stated, ten per cent of trunk calls outgoing from Onalaska were not completed during the busy hour on account of busy trunk lines. This additional line is required irrespective of the pay-station problem, and it is believed that with some care the company can eliminate this problem.

It is therefore ordered: That the La Crosse Telephone Company shall put into effect the following optional rate for rural subscribers of its Onalaska exchange:

Optional Rate for Rural Subscribers on the Onalaska Exchange
of the La Crosse Telephone Company.

The subscribers of any rural line on the Onalaska exchange may, if a majority of such subscribers shall so agree, elect to take service at \$15.00 per phone per year; such service to be

limited to Onalaska local and rural connections. With such service, a toll rate of 5 cents per message shall be charged for each completed call to La Crosse for any subscriber who has previously come under the provisions of the above rate for limited Onalaska service.

The La Crosse Telephone Company is further authorized to charge La Crosse subscribers 5 cents per completed call for each call terminating at rural phones having limited Onalaska service.

An election to take the limited Onalaska service may be made at the beginning of any quarter and shall be effective for at least two quarters following, after which, upon a majority vote of the subscribers of the rural line, it may be abrogated at the beginning of any quarter.

It is further ordered: That the complaint regarding rural Onalaska service be, and the same hereby is, dismissed.

It is further ordered: That the La Crosse Telephone Company abolish pay-stations in business places in Onalaska, except when such subscribers specifically desire that they be retained or installed.

It is further ordered: That the La Crosse Telephone Company construct and maintain one additional trunk line between Onalaska and La Crosse.

This order shall be complied with not later than April 1, 1915.

Railroad Commission of Wisconsin, by Halford Erickson, David Harlowe, Carl D. Jackson, Commissioners.

ARIZONA CORPORATION COMMISSION.

J. I. BUTLER

v.

TUCSON GAS, ELECTRIC LIGHT, & POWER COMPANY.

[Informal Complaint No. 136.]

Rates — Minimum charge — X-ray machine.

A special rate classification, including a minimum charge, should be made for the use of electricity for an X-ray machine.

Rates — Minimum charge — X-ray machine.

A minimum charge of not to exceed \$3 per month was fixed, for the use of electricity for a particular X-ray machine.

[February 9, 1915.]

PROCEEDING to obtain reparation for overcharge; relief granted.

OPINION.

By the Commission: In this complaint, J. I. Butler alleges that he is being overcharged by the Tucson Gas, Electric Light, & Power Company for electricity used in the operation of his X-ray machine, and prays that a proper rate be established.

The Commission has given careful consideration to the questions involved in this matter, and is of the opinion that due to the peculiar conditions incident to the operation of the machine, a minimum charge for same is not properly included in either a general lighting or power schedule, and that a special rate classification should obtain.

An examination of the rate schedules filed with the Commission by the various electric utilities fails to reveal the basis of charge for X-ray machine operation, and we therefore assume if any such service is being rendered, that the charge is made either in accordance with the regular power or regular lighting rates, and it is expected that service for X-ray machines will be reported as a separate classification in the future. It is our opinion that \$3 per month as a minimum is sufficient to meet the service rendered complainant in this case. It is therefore ordered that no amount in excess of \$3 per month be charged by respondent as a minimum bill for electricity used in the operation of an X-ray machine.

Arizona Corporation Commission, F. A. Jones, Chairman,
A. W. Cole, Commissioner.

ARIZONA CORPORATION COMMISSION.**IN RE M. J. THOMAS ET AL.**

[Docket No. 204.]

Rates — Street railways — Zone system.

The Commission refused to reduce the fare of a street railway from

10 cents to 5 cents to and from a point three quarters of a mile beyond a 5-cent zone, where, in order to do so, the entire scheme of rates would require readjustment, especially where the company offered 40 ride ticket books at a price which would reduce a single fare to $6\frac{1}{2}$ cents.

Rates — Street railways — Coupon book tickets.

Permission was granted a street railway to sell coupon books of tickets for \$2.70 each, good for 40 rides to and from a point in a 10-cent zone, reducing the single fare to $6\frac{1}{2}$ cents.

[February 11, 1915.]

APPLICATION for reduction of fares of a street railway company; denied.

Appearances: Chas. D. Ward for petitioners, Chalmers & Kent for Phoenix Railway Company of Arizona.

By the **Commission**: This action was brought by residents of "Long View Tract," a suburban settlement to the city of Phoenix, through which the Phoenix Railway Company of Arizona operates its street railway, praying the Commission to order said company to reduce its fare from said "Long View Tract" to Phoenix, and *vice versa*, from 10 cents to 5 cents per passenger.

After due notice was given, the case was called for trial on December 14, 1914, and both petitioners and respondent appeared by counsel.

The Commission finds, from the evidence, that the Phoenix Railway Company of Arizona is engaged in operating a street railroad system in the city of Phoenix, Arizona, and adjacent territory; that it has a suburban line running from Phoenix to Glendale, a distance of approximately 17 miles, running through what is known as "Long View Tract;" that the fare charged passengers is based upon a zone system, *viz.*: First zone running from First street and Washington street to Cave Creek road, a distance of $3\frac{3}{8}$ miles, for which a fare of 5 cents is charged; second zone, from Cave Creek road to Desert Curve, a distance of $3\frac{1}{8}$ miles, for which a fare of 5 cents is charged; and from Desert Curve to another point on its said line of railway, of approximately a similar distance, another fare of 5 cents is charged; and so on to the town of Glendale.

Long View Tract is a small settlement just outside of the city limits of Phoenix, and about $\frac{3}{4}$ of a mile beyond Cave Creek road, the end of the first zone. Should the Commission disturb one of

these zones, the entire scheme of rates must be readjusted, and we are not prepared to say that the respondent company has not arrived at an equitable plan of rates.

Subsequent to the hearing, however, the respondent company has made application to this Commission for permission to issue and sell coupon books of tickets, good for 40 rides, for use of persons traveling from First street and Washington street, in the city of Phoenix, to the Indian School road, on the Glendale car line, or *vice versa*, said coupon books to be sold at \$2.70 each, and to be on sale and effective on and after February 20, 1915. Indian School road is in the Long View Tract, and this arrangement will reduce their fare from 10 cents to 6 $\frac{3}{4}$ cents.

After careful consideration of all the matters and things presented at said hearing, we are of the opinion that the offer of the respondent company, as herein outlined, is reasonable and fair.

It is therefore ordered that the complaint in the above-entitled and numbered case be, and the same is hereby, dismissed.

It is further ordered that the Phoenix Railway Company of Arizona be, and it is hereby, authorized to issue and sell coupon books good for rides between points above specified, and upon the terms mentioned above.

Arizona Corporation Commission, F. A. Jones, Chairman, A. W. Cole, Commissioner.

CALIFORNIA RAILROAD COMMISSION.

CITY OF COALINGA

v.

PLEASANT VALLEY WATER COMPANY AND COALINGA CONSOLIDATED WATER COMPANY.

[Case No. 623.]

IN RE PLEASANT VALLEY WATER COMPANY AND COALINGA CONSOLIDATED WATER COMPANY.

[Application No. 1341; Decision No. 2063.]

Valuation — Underground water rights — Prescriptive use.

An allowance will not be made for the value of underground water

rights, on the theory that a water company whose property is being valued for rate purposes has by prescriptive use acquired a right to the water in addition to the value of the land, where it is not shown that the company has used the waters in such a way as to interfere with the use of other owners, or that it has taken more than its fair share thereof.

Apportionment — Values — Water company supplying two territories.

A segregation of the property of a water company supplying a city and an oil field on the basis of the relative amounts used may be unfair to the city, where it appears that if the use of the waters in the oil field should cease, the city would be charged with the entire value of the property, which would be more than would be necessary for the service.

Valuation — Working capital.

An allowance of \$1,900 for working capital is excessive where the entire maintenance and operating expenses of the company are only slightly in excess of \$6,000 per year.

Valuation — Going value — Repaid development expenses.

An allowance will not be made to represent losses in the creation of a portion of the company's business in a valuation for rate purposes, where such losses have been more than repaid from earnings.

Depreciation — Annual allowance.

A reasonable allowance must be made for a depreciation annuity.

Depreciation — Sinking-fund basis.

The Commission, in valuing the property of a waterworks company for rate purposes, allowed a depreciation annuity on the sinking-fund basis.

Return — Amortization allowance.

An annual amortization allowance equal to 3.33 per cent of the value of the property of a water company will not be made on the supposition that the city which the company supplies will be extinct in ten years, merely because the population of the city has decreased within two years and operations in certain oil fields on which the city is dependent have also diminished, where other facts point to a much longer life for the city.

Rates — Water — Fire purposes.

A water company was allowed to increase its city water rate from \$100 per month to \$140 per month for fire purposes, but was not allowed to increase its other rates; although it appeared that the revenues of the company were decreasing, where the rates, as modified by the Commission, were as high as the company could reasonably and justly charge.

[January 13, 1915.]

PROCEEDINGS to determine the reasonableness of water rates; permission given company to increase rates for fire purposes only.

Appearances: Henry S. Richmond, for complainant; A. E. Shaw, for defendants.

REPORT OF THE COMMISSION.

Thelen, Commissioner: These two proceedings, which were consolidated for hearing and decision, involve the rates to be charged for water sold to the city of Coalinga and to the inhabitants thereof, for domestic and fire-protection purposes.

The complaint in case No. 623 alleges, in effect, that Pleasant Valley Water Company is a corporation engaged in the sale of water for domestic purposes to the city of Coalinga and the inhabitants thereof; that Coalinga Consolidated Water Company is a corporation engaged in the sale of water for domestic and manufacturing purposes in the vicinity of Coalinga, Fresno county, California; that these two corporations have entered into a contract whereby the Coalinga Consolidated Water Company, hereinafter referred to as the Coalinga Company, supplies to Pleasant Valley Water Company, hereinafter referred to as the Pleasant Valley Company, all the water sold by the Pleasant Valley Company, in return for the payment of one half the gross proceeds derived by the Pleasant Valley Company from the sale of water; that the Pleasant Valley Company is charging for water a minimum rate per month for each meter connection of \$2.00 for hard water and an additional meter rate of 2 cents per barrel for all hard water used over 100 barrels per month, and also a minimum rate per month for each meter connection of \$1 for distilled water, and an additional meter rate of $16\frac{2}{3}$ cents per barrel for all distilled water used over 5 barrels per month; and that these rates are excessive and unreasonable. Complainant asks this Commission to establish a minimum rate for each meter connection of \$1 for hard water and an additional meter rate of $1\frac{1}{4}$ cents per barrel for all hard water used over 80 barrels per month, and also a minimum rate of 75 cents per month for distilled water, and an additional meter rate of 10 cents per barrel for all distilled water used over $7\frac{1}{2}$ barrels per month. Complainant also asks that the contract between the Coalinga Company and the Pleasant Valley Company be abrogated, and that the Coalinga Company be directed to sell hard water to the Pleasant Valley Company for the amounts specified in the complaint.

The Pleasant Valley Company and the Coalinga Company each filed an answer denying that the rates charged are unjust

and unreasonable, and alleging that the rates charged for water supplied to the city of Coalinga and the inhabitants thereof are too low, and should be increased.

These companies later filed their petition, in application No. 1341, asking that this Commission increase the rate for water sold by the Pleasant Valley Company in the city of Coalinga for other than fire purposes to \$3 per month for each tap, with an additional charge of 50 cents for each 1,000 gallons used in excess of 3,000 gallons per month. The petitioners asked that the rate for water furnished to the city of Coalinga for fire purposes be fixed at the sum of \$100 per month. Subsequently, petitioners asked and were granted leave to amend this application so as to ask that the Commission establish a just and reasonable rate to be charged for water delivered to the city of Coalinga for fire purposes, irrespective of the rate of \$100 per month now in effect for this service.

Public hearings were held in the city of Coalinga on September 2 and 3, 1914, and in San Francisco on September 23 and 24, and November 16, 1914. Careful consideration has been given to the transcript of the evidence and to the exhibits introduced, and these proceedings are now ready for decision.

The Coalinga Company is the owner of a 10-acre tract of land located about $3\frac{1}{2}$ miles distant from the city of Coalinga, and described as the northwest $\frac{1}{4}$ of the northeast $\frac{1}{4}$ of the southwest $\frac{1}{4}$ of section 16, township 20 south, range 15 east, M. D. B. and M., whereon the company has bored six wells for water, in addition to a seventh well which is not claimed in the company's inventory. The company was originally incorporated for the purpose of selling water to oil companies operating in the Coalinga oil fields, and the company's operations prior to 1909 were confined to this class of business, without the sale of any water for use in the city of Coalinga.

Prior to 1909, the city of Coalinga was supplied with water for domestic uses from tank cars or from wells, the water whereof contained a large percentage of sulphur, and was not satisfactory for domestic use. The provisions for fire protection were entirely inadequate. On April 28, 1909, J. L. Chaddock and W. H. Stenger, owners of the stock of the Coalinga Company, entered into an agreement with the Pleasant Valley Company,

whereby Chaddock and Stenger agreed to construct a pipe line from their property to the city of Coalinga in return for capital stock in the Pleasant Valley Company, to be issued at par, in exchange for the pipe line at cost. The issue of the stock was to be made conditional upon the ability of the Coalinga Company to supply through this pipe line at least 10,000 barrels of good water per day. Upon the issue of the stock, as agreed, the Pleasant Valley Company was to become the owner of the pipe line and the rights of way along which the same might be laid. This contract contains other provisions to which it is not necessary now to refer. Under a subsequent arrangement, it was provided that the Pleasant Valley Company should pay to the Coalinga Company, in return for the water received from that company, 50 per cent of the gross revenue received by the Pleasant Valley Company from the sale of water to the city of Coalinga and to the inhabitants thereof. Under a separate contract, provision was made for the sale by the Coalinga Company to the Pleasant Valley Company of distilled water which the Pleasant Valley Company conducts through a separate pipe system to the city of Coalinga, where the water is sold and delivered through this pipe system for drinking and other domestic purposes. The rates charged by Pleasant Valley Company for distilled water are not seriously questioned in these proceedings, and it will not be necessary to establish rates therefor.

In examining the rates proper to be charged by the Pleasant Valley Company for water supplied to the city of Coalinga and to the inhabitants thereof, other than distilled water, I shall consider the following subjects in order:

1. Value of property;
2. Depreciation and amortization annuities;
3. Maintenance and operating expenses;
4. The rate.

1. *Value of Property.*—In determining the value of the property for the purpose of these proceedings, it will be necessary to consider separately the property of the Coalinga Company and that of the Pleasant Valley Company.

The property of the Coalinga Company is used in part exclusively for service to the oil fields and in part jointly for service

to the oil fields and to the Pleasant Valley Company for its service to the city of Coalinga and the inhabitants thereof.

This Commission's hydraulic department estimated that the cost to reproduce new the property of the Coalinga Company, which is jointly used for service to the oil fields and to Coalinga, is \$48,009. Mr. Gale S. Strout, engineer for the water companies, estimated that the cost to reproduce these properties jointly used is \$80,092. This sum, however, includes in addition to an item of \$2,500 for the land, an item of \$30,000. for water rights. This item is added on the theory that the Coalinga Company has acquired, by prescriptive use, a right to water which is additional to the value of the land and water before the alleged prescriptive right was acquired. While the rule in this state, in accordance with the immemorial rule applied in England, was formerly that title by prescription cannot be acquired to underground waters (*Hanson v. McCue*, 42 Cal. 303, 10 Am. Rep. 299), this rule was apparently changed by the supreme court of this state in *Hudson v. Dailey*, 156 Cal. 617, 629, 105 Pac. 748. However, it was clearly indicated by Mr. Justice Shaw in the *Hudson Case* that no prescriptive rights accrue unless it be shown that the party claiming this right has used the water in such a way as to interfere with the use of the water by other landowners, or so as to make the use of the party claiming the prescriptive right adverse to other landowners, and to establish a prescriptive right. The party claiming the prescriptive right must allege and prove that he has taken more than a reasonable proportion of the water.

There is no evidence in the present case that the Coalinga Company has used the underground waters in such a way as to interfere with the use thereof by other landowners, or that the Coalinga Company has taken more than its fair and reasonable share of the waters which underlie its lands and those of other persons owning lands in this general vicinity. I am accordingly of the opinion that no value should be allowed for water right in addition to the value which adheres to land in this vicinity, including the usual right to the use of a reasonable amount of water developed by the sinking of wells.

The problem of ascertaining what portion of the Coalinga Company's property jointly used for service to the oil fields and to

the city of Coalinga is chargeable to the city of Coalinga is not free from difficulties.

The water companies made the segregation on the basis of the relative amounts of water used in the oil fields and in the city of Coalinga on August 10, 1914. The total amount so used was 247,650 gallons, of which 91,630 gallons, or approximately 37 per cent, was used in the fields, and 156,020 gallons, or approximately 63 per cent, was used in the city of Coalinga. The evidence, however, shows that in the month of August the use of water in the city of Coalinga is higher than in almost any other month of the year. Consequently, the percentages thus established are manifestly unfair to the city of Coalinga.

The Commission's hydraulic department used percentages of segregation based on the relative use of water during the year 1914. It appears that the percentage of water used in the oil fields is gradually decreasing, due to less active development of the fields, and that the percentage of water used charged to the city of Coalinga is accordingly increasing. The following table clearly shows this situation:

TABLE NO. I.
Use of Water in Oil Fields and City of Coalinga.

Year	Field	Field's per cent of total	City	City's per cent of total
1910	2,100,000 barrels	59.7 per cent	1,417,674 barrels	40.3 per cent
1911	1,400,000 barrels	53.2 per cent	1,232,687 barrels	46.8 per cent
1912	1,100,000 barrels	48.8 per cent	1,198,944 barrels	51.2 per cent
1913	854,100 barrels	42.9 per cent	1,133,739 barrels	57.1 per cent
1914 to August 31	388,300 barrels	36.4 per cent	677,761 barrels	63.6 per cent

It appears from this table that the use of water in the oil fields has diminished from 2,100,000 barrels in 1910 to 388,300 barrels in the first eight months of 1914, and that the percentage of water used in the fields has decreased from 59.7 per cent of the entire amount of water pumped in 1910 to 36.4 per cent during the first eight months of 1914. Likewise, it appears that the percentage of the entire amount of water pumped used in the city of Coalinga has increased from 40.3 per cent in 1910 to 63.6 per cent in the first eight months of 1914. If the hydraulic department's test is logically applied year by year, it will follow that if the use of water for the oil fields should cease, the city of Coalinga would be charged with the value of the entire property now devoted to the joint service

of the field and of the city. In view of the fact that more property is devoted to this joint service than would be necessary if the city of Coalinga were alone served, it seems clear that an injustice may be done the city of Coalinga if the basis used by the hydraulic department is consistently applied. If the Commission knew the cost of a substitute water system large enough to supply only the needs of the city of Coalinga, it would be easier to ascertain the value to be allowed for the property used in the development of water. There is no evidence, however, on this question.

After a careful consideration of the different bases which have been suggested, and of the evidence concerning the value of the property jointly used, I find as a fact that the sum of \$24,000 represents at least a fair value of that proportion of the joint property which is justly chargeable to the city of Coalinga's use.

Referring now to the value of the property of the Pleasant Valley Company, the Commission's hydraulic department estimates the cost to reproduce new the sum of \$58,876, to which amount the department suggested the addition of \$1,900 for working capital. As the entire maintenance and operating expenses of this company are only slightly in excess of \$6,000 per year, it seems clear that the allowance for working capital is largely in excess of a proper allowance.

The water companies estimated the cost to reproduce the property of the Pleasant Valley Company at \$72,524. This total, however, includes an item of \$13,265 "for intangibles," which were explained to represent the losses of the company in the creation of a portion of its business. The Coalinga Company's manager stated that this item is simply an estimate. This Commission has heretofore on several occasions said that the cost of developing the business, if reliable evidence is presented, should be considered and that this cost should be taken care of either in rates high enough during the early stages of the utility's operations to take care of this expense or by adding the expense to capital account and allowing a return thereon during subsequent years. If the item has been fully covered in one of these two alternative methods, it seems clearly erroneous to claim it again under the other alternative. The evidence

in these proceedings shows that on March 18, 1912, the directors of the Pleasant Valley Company unanimously adopted a resolution as follows:

"Resolved, That, whereas, the assets of this corporation are more than \$71,000, and whereas, the cash received from the sale of 33,769 shares of the capital stock outstanding to date is \$34,148.50, and whereas, the additional amount of such assets has been accumulated from the earnings of the company, which said earnings, instead of having been distributed as a dividend to the stockholders and then afterwards paid in by said stockholders for additional capital stock, have been deferred from said stockholders and have gone into mains and other extensions; now, therefore, be it resolved, that one additional share of the capital stock of this corporation be issued to the present stockholders for each share of the capital stock now owned and held by them, and the president and secretary of this corporation be, and they are hereby authorized and directed to so issue the same forthwith."

The additional capital stock was actually issued as authorized by this resolution. This resolution clearly shows that in the judgment of the board of directors, the earnings in the three years 1909 to 1912 had been in excess of 100 per cent of the cash actually paid for the outstanding stock. In view of this condition, it must be clear that such development expenses as were incurred during the first years of the Pleasant Valley Company's history have been more than repaid from earnings of the first few years and that it would be most unfair to compel the rate payers now to again pay for these costs by adding to capital account an item for development expenses.

I find as a fact that the sum of \$59,376 is a fair and reasonable value to assign to the property of the Pleasant Valley Company, on which property the company is entitled to a return.

2. *Depreciation and Amortization Annuities.*—A reasonable allowance must, of course, be made for a depreciation annuity. This allowance will be made on the sinking fund basis.

In addition to an allowance under this head, the water companies claim an allowance under the head of amortization annuity amounting to 3.33 per cent of the value of the property each year for the purpose of amortizing the property. This

allowance is asked for on the theory that the city of Coalinga will be extinct within ten years from date, and that the property of the water companies will thereupon lose all value except salvage value. There is evidence in these proceedings showing that the population of Coalinga has decreased during the last year or two, and also evidence that the operations in the oil fields, on which Coalinga is at the present time largely dependent, have diminished during the last year or two. The evidence, however, also shows that the major portion of the oil lands in the vicinity of Coalinga are still to be developed. In my opinion, based on the evidence herein, it is going very far to say that the city of Coalinga will cease to exist ten years from date, or even fifteen or twenty years from date. The general manager of the water companies testified that he was having considerable success in raising deciduous fruit trees on the land of the Coalinga Company; that the land in this vicinity was good land for agricultural purposes; and that, in his opinion, there is a considerable field for the development of these lands when placed under irrigation. According to this testimony, even if the development of the oil fields should gradually decrease, the city of Coalinga might nevertheless continue to exist as a center of an agricultural community. The evidence that the city will be defunct in ten years is contrary to other evidence, to the effect that the oil fields are only partially developed, and that this territory may hereafter be developed for agricultural purposes, and I can give but little weight to it.

I find as a fact that an allowance of \$6,000 per annum is at least a fair and reasonable allowance to be made for depreciation annuity as affected by ultimate amortization.

3. *Maintenance and Operation.*—I find that the sum of \$7,794 is a fair and reasonable sum to be allowed annually for that portion of the maintenance and operating expenses of the Coalinga Company which is fairly chargeable to the city of Coalinga, and that the sum of \$6,295.50 is a reasonable sum to be allowed for the annual maintenance and operating expenses of the Pleasant Valley Company for its service of water for domestic and fire purposes, and that the sum of \$400 per year should be allowed for the gradual payment of the expenses of these hearings, until the reasonable cost of these hearings has been paid

for. If the water companies desire to be generous and to pay expenses for these hearings in excess of those which their present financial condition warrant, they must be generous at their own expense, and not at the expense of their consumers.

4. *The Rate.*—The receipts of the Pleasant Valley Company from the sales of domestic water and from water sold to the city of Coalinga for fire and other purposes have been as follows:

TABLE No. II.

Receipts of Pleasant Valley Water Company from Water Sold for Domestic Purposes.

1909	\$ 7,207
1910	26,998
1911	26,161
1912	27,309
1913	26,996

The water companies' exhibit No. 6 shows an income for the year ending June 30, 1914, from the sale of domestic water and water sold to the city of Coalinga amounting to \$24,624.80. This amount includes \$800 paid by the city of Coalinga for fire protection, but does not include the remaining sum of \$400 still due from the city for this service at the rate of \$100 per month. When this amount is collected, the revenue for the year ending June 30, 1914, will accordingly be \$25,024.80. This item will be somewhat increased by the collection of other accounts which have not as yet been paid. There is evidence that the revenue received from the sale of water in Coalinga has been decreasing for the last two years or so, and it may well be that the revenues for the year ending June 30, 1915, will be less than those for the year ending June 30, 1914. If the amount of water sold decreases and the number of consumers is less, the operating and maintenance expenses will also be less. In this opinion I am allowing the full amount paid by the Pleasant Valley Company for maintenance and operating expenses for the year ending June 30, 1911, and the full amount of the operating and maintenance expenses of the Coalinga Company fairly chargeable to the city of Coalinga during the same period.

The rates charged for domestic water supplied to the inhabitants of Coalinga are already high and cannot reasonably be increased. I find, however, that the rate paid by the city of Coalinga for fire protection should be increased from \$100 to \$140 per month.

While, even with this increase in the rate, the returns to the water companies will be less than they have hitherto expected to receive, I find that, considering the conditions actually existing at Coalinga, as shown by the evidence in these proceedings, the rates now prevailing, as herein modified by the increase in the rate for fire protection, are as high as the water companies can reasonably and justly charge.

In all respects other than the increase of the rate paid by the city for fire protection, I find that the complaint and the application should be dismissed.

I submit the following form of order:

ORDER.

The above-entitled proceedings having been consolidated for hearing and decision, and public hearings having been held therein, and said proceedings having been submitted, and being now ready for decision,

It is hereby ordered that the rate paid by the city of Coalinga for water supplied for fire purposes be and the same is hereby increased from \$100 per month to \$140 per month, but that in all other respects the complaint and the application herein be and the same are hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 13th day of January, 1915.

CALIFORNIA RAILROAD COMMISSION.

IN RE MT. WHITNEY POWER & ELECTRIC COMPANY.

[Application No. 1304; Decision No. 2067.]

Security issues — Preferred stock — Ability to pay dividends.

An electric company was authorized to issue 4,180 shares of 7 per cent cumulative preferred capital stock, of the par value of \$100 per share, it appearing that the company could, without trouble, pay the dividends thereon, the proceeds of such stock to be devoted to the payment of certain outstanding notes and accounts, with the exception of the sum of \$100,000 which was ordered to be held in the treasury subject to the further order of the Commission.

Security issues — Retirement of preferred stock.

An electric corporation was authorized to issue 7,500 shares of its common stock of the par value of \$100 per share in return for the surrender to its treasury of a like amount of outstanding preferred stock.

Security issues — Sale price.

An authorized issue of 7 per cent cumulative preferred stock of the par value of \$100 per share was ordered to be sold at not less than \$95 per share.

[January 13, 1915.]

APPLICATION for authority to issue preferred and common stock; granted.

Appearances: F. D. Madison, for applicant.

REPORT OF THE COMMISSION.

Thelen, Commissioner: Mt. Whitney Power & Electric Company is engaged in the business of generating and selling electric energy for light and power purposes in Tulare county, and part of the northern portion of Kern county. It distributes electric energy for light and power in and about the cities of Visalia, Tulare, Porterville, Lindsay, and Exeter. A large portion of the company's business consists in the sale of power for pumping purposes on the orchards and the farms of Tulare county, particularly in that section of the county which is devoted to the cultivation of citrus fruits.

Petitioner owns and operates three hydroelectric generating stations located on Kaweah river in Tulare county, and having a combined capacity of 10,000 horse power; one hydroelectric generating station located on Tule river in Tulare county, having a capacity of 3,000 horse power; and one turbo-generator steam generating plant located at Visalia, Tulare county, of 10,000 horse-power capacity. The combined capacity of the four stations is reported by petitioner at 23,000 horse power.

The company's main office is located in Visalia.

On October 31, 1914, Mt. Whitney Power & Electric Company filed an application with this Commission, asking for authority to issue 4,180 shares of its 7 per cent cumulative preferred capital stock of the par value of \$100 per share, or a total par value of \$418,000. The company asks authority to sell this stock at \$90 per share.

The petition alleges that the company has an authorized capital stock of \$5,000,000, divided into 50,000 shares of the par value of \$100 each; 18,000 of said shares of the aggregate par value of \$1,800,000 are preferred stock and 32,000 shares of the aggregate par value of \$3,200,000 are common stock. Petitioner reports that 7,500 shares of its preferred stock of the par value of \$750,000 and 18,750 shares of its common stock of the par value of \$1,875,000 are issued and outstanding.

On December 30, 1914, Mt. Whitney Power & Electric Company filed a supplemental application asking authority to issue 7,500 shares of its common stock of the aggregate par value of \$750,000 upon the return to petitioner's treasury of the outstanding 7,500 shares of preferred stock of the par value of \$750,000.

The entire issued stock of Mt. Whitney Power & Electric Company of California, with the exception of shares sufficient to qualify directors, is owned by Mt. Whitney Power & Electric Corporation of New York. It will therefore be possible for Mt. Whitney Power & Electric Corporation of New York to surrender to petitioner all of the outstanding preferred stock, and to take instead a like amount of common stock.

The petition therefore, may be summarized as follows:

(1) Petition of Mt. Whitney Power & Electric Company to issue 4,180 shares of preferred stock of the par value of \$100 per share at \$90 per share.

(2) Petition of Mt. Whitney Power & Electric Company to issue 7,500 shares of common stock of the par value of \$100 per share in return for the surrender to its treasury of a like amount of preferred stock now outstanding.

A favorable determination of this application would result in an outstanding issue of preferred stock of 4,180 shares of the par value of \$100 per share, or a total par value of \$418,000, and an outstanding issue of common stock amounting to 26,250 shares of the par value of \$100 per share, or a total par value of \$2,625,000.

Petitioner's articles of incorporation describe the preferred stock as follows: "The said 18,000 shares of preferred stock shall entitle the holder or holders thereof to receive out of the net earnings, and the company shall be bound to pay, a semiannual cumulative dividend at the rate of, but never exceeding, 7 per cent

per annum, before any dividend shall be set apart or paid on the common stock, and after said dividend on the preferred stock all other dividends shall belong to the common stock; and in case of liquidation or dissolution of the corporation before any amount shall be paid to the holders of the common stock, the holders of the preferred stock shall be entitled to be paid the amount paid upon their shares and the dividends accumulated and unpaid thereon, but shall not participate in any surplus assets after paying off the whole of the paid up capital."

In its original application herein, Mt. Whitney Power & Electric Company set forth that it proposed, from the sale of the \$418,000 of preferred stock, to realize the sum of \$376,200, and to apply this money in the liquidation of its outstanding notes and accounts payable.

Petitioner submitted a detailed inventory of its properties, and presented additional exhibits, bringing its appraisal as of June 30, 1914, to \$3,367,880.48. This represents the appraisal of applicant's physical properties with a deduction for depreciation.

This Commission's engineering department checked over petitioner's figures, and the Commission's auditing department made an investigation of the original cost of the properties. These appraisals have been brought to September 30, 1914. The figures as here given do not represent this Commission's appraisal of these properties, but are made up from the company's own appraisal and from the company's books. They cover applicant's physical properties, and are in no sense a finding of value by this Commission.

The tabulations thus made give:

Estimated reproduction cost as per appraisal submitted by company and brought to September 30, 1914	\$3,926,264 51
Estimated depreciated reproduction cost on sinking fund basis as of September 30, 1914, based on appraisal submitted by company	3,450,528 51
Estimated depreciated reproduction cost on straight line basis, as of September 30, 1914, based on appraisal submitted by company	3,210,495 51
Book cost as shown by petitioner's books as of September 30, 1914	3,620,752 58
Book cost less accrued depreciation, sinking fund basis, as of September 30, 1914	3,182,026 00
Book cost less accrued depreciation, straight line basis, as of September 30, 1914	2,960,690 00

In the estimated reproduction cost figures, the allowance for overhead expenses used in petitioner's appraisal have been retained, although it is possible that investigation will show that

these overhead percentages are higher than those actually incurred.

Petitioner submits the following statement of assets and liabilities as of October 1, 1914:

ASSETS.		
Plant		\$5,577,883 30
Current assets:		
Cash	\$ 10,290 69	
Notes receivable and accrued interest	42,624 35	
Customers—Current month	65,253 50	
Customers—Previous months	116,622 69	
Miscellaneous accounts receivable	23,766 40	
Merchandise	59,605 56	
Capital funds on account of construction ..	46,188 87	
Total		364,352 06
Prepayments:		
Unexpired insurance	\$3,091 60	
Taxes	6,870 50	
Suspense	9,620 61	
Note interest paid	425 34	
Total		20,008 05
Miscellaneous:		
Bond discount	\$204,360 27	
Organization expense miscellaneous	17,434 66	
Uncompleted work orders	44,600 51	
Plant deposit	9,410 95	
Bonds on hand	20,000 00	
Bond issue	12,773 96	
		308,580 35
Total assets		\$6,270,823 76
LIABILITIES.		
Capital:		
Common capital stock	\$1,875,000 00	
Preferred capital stock	750,000 00	
Bonds	2,553,000 00	
Total		\$5,178,000 00
Current:		
Notes payable and accrued interest	\$332,642 27	
Accounts payable	41,577 13	
Pay roll	2,767 74	
Total		376,987 14
Meter deposits		3,133 03
Reserves:		
Depreciation	\$442,164 64	
Account loss	288 14	
General funds on account of construction ..	46,188 87	
Total		488,641 65
Surplus		224,061 94
Total liabilities		\$6,270,823 76

The foregoing statement would seem to indicate that petitioner's outstanding bonds have a face value of \$2,553,000. However, \$20,000 of these bonds are held in petitioner's treasury.

Consequently the net obligation upon petitioner's bonds is \$2,533,000.

Petitioner's floating indebtedness as of October 1, 1914, is listed as \$376,987.14, but this amount has been somewhat modified during the last three months.

Petitioner reports a large amount of uncollected accounts. Since filing the balance sheet heretofore set forth, petitioner has written off \$40,000 from these overdue accounts.

From petitioner's reports the Commission's accounting department has made the following summaries of petitioner's earnings and expenses:

TABLE I.
Earnings and Expenses.
November 8, 1909, to June 30, 1914.

	Nov. 8, 1909, to Dec. 31, 1909	1910	1911	1912	1913	6 months to June 30, 1914
Operating revenue ..	-----	\$228,617.21	\$284,076.22	\$440,211.20	\$557,014.88	\$311,430.92
Operating expenses ..	-----	141,258.20	154,889.87	217,801.91	256,456.51	131,582.32
Depreciation ..	-----	\$6,112.15	48,248.66	58,526.30	67,451.28	58,556.34
Total operating expenses ..	-----	\$6,112.18	\$190,507.80	\$213,516.17	\$255,253.19	\$315,012.85
Net operating revenue ..	-----	\$24,950.98	\$133,109.41	\$170,560.05	\$154,958.01	\$242,002.03
Miscellaneous rent revenue ..	-----	-----	20.00	50.00	320.00	170.00
Interest revenue ..	-----	9,089.93	6,014.69	5,520.31	29,996.20	11,719.53
Jobbing and merchandise revenue ..	-----	6,707.24	7,528.23	8,862.81	10,570.08	4,448.95
Total income ..	-----	\$24,950.98	\$153,906.58	\$184,122.97	\$169,391.13	\$282,888.31
Deductions—						
Uncollectable bills ..	-----	\$355.03	\$2,977.18	\$3,547.57	\$4,022.52	\$5,052.67
Waterworks loss or gain ..	-----	-----	711.26	557.10	261.02	-----
Interest on funded debt ..	-----	3,162.50	54,689.17	69,504.01	85,423.34	114,918.35
Other interest ..	-----	6,767.38	17,117.14	1,763.36	3,441.74	23,282.75
Amortization of debt discount ..	-----	137.31	4,564.89	5,593.62	6,266.97	6,927.68
Total deductions ..	-----	\$10,422.22	\$78,637.12	\$80,965.66	\$99,415.59	\$150,181.45
Net income ..	-----	\$14,528.76	\$75,269.46	\$103,157.31	\$69,975.54	\$132,706.86
Miscellaneous undistributed adjustments ..	-----	210.64	5,444.64	16,136.27	6,846.44	{ 31,571.57 8,773.77 }
Dividends on preferred stock ..	-----	-----	-----	-----	112,729.75	{ 2,816.99 ----- }
Totals ..	-----	\$14,318.12	\$69,824.82	\$87,021.04	\$55,906.77	\$91,961.52

During the course of the hearing, petitioner's attention was directed to certain undue expense items in connection with general executive salaries, and to certain disbursements apparently not necessary to its business. It will not be necessary to go into these matters further at this time, for the reason that a rate investigation has been set down for hearing which will involve in detail all of these matters, and at that time such readjustments as

may be deemed proper can be made. I leave this matter at this time in the expectation that petitioner will take steps to either reduce or eliminate these items.

Petitioner operates in a rich and growing section, and its business, under normal conditions, should constantly increase. It is in competition in some sections with Tulare County Power Company and San Joaquin Light & Power Corporation. By reason of low water during the year 1912, petitioner was forced to build a large auxiliary steam plant. Its water supply will remain more or less uncertain until it has completed necessary storage arrangements. Such storage arrangements as have been undertaken have been halted by a controversy over water rights.

Petitioner's gross earnings for the year 1913 were derived from the following sources in the proportion indicated:

	Per cent of total
Residence lighting	10.67
Commercial lighting	7.51
Municipal lighting	2.31
All other lighting	.69
Industrial power	4.54
Agricultural power	57.95
All other power	16.33
Total	100.00

Petitioner has submitted an amended list of the purposes to which it proposes to apply the proceeds from the sale of the preferred stock as follows:

Promissory Notes.

In whose favor	Date	Amount	Date of Maturity	Rate of Interest
John Hays Hammond	May 15, 1914	\$13,543.62	Oct. 15, 1914	7 per cent
John Hays Hammond	June 1, 1914	73,857.34	Dec. 1, 1914	7 per cent
John Hays Hammond	June 15, 1914	126,511.19	Dec. 15, 1914	7 per cent
John Hays Hammond	July 1, 1914	20,000.00	Dec. 1, 1914	7 per cent
First National Bank of Visalia ..	June 4, 1913	5,000.00	June 5, 1913	7 per cent
First National Bank of Visalia ..	June 5, 1913	3,000.00	June 6, 1913	7 per cent
First National Bank of Visalia ..	June 1, 1913	5,000.00	July 2, 1913	7 per cent
First National Bank of Visalia ..	Apr. 16, 1914	1,500.00	Apr. 16, 1915	7 per cent
Anglo & London Paris National Bank	Aug. 7, 1913	5,000.00	Nov. 7, 1913	7 per cent
Anglo & London Paris National Bank	Aug. 7, 1913	5,000.00	Dec. 7, 1913	7 per cent
Anglo & London Paris National Bank	Aug. 7, 1913	5,000.00	Jan. 7, 1914	7 per cent
Louis Sloss & Company	Jan. 6, 1914	1,000.00	Jan. 6, 1915	7 per cent and $\frac{1}{2}$ per cent commission.
Louis Sloss & Company	Feb. 24, 1914	2,500.00	Feb. 24, 1915	7 per cent and $\frac{1}{2}$ per cent commission.
Amount due C. C. Moore & Company				\$ 9,000 00
Interest				4.143 83
Amount due Blyth, Witter, & Company				15,000 00
Reimbursement for expenditures from income for capital account.....				96,931 10

I find from the statement of petitioner's earnings that if such earnings continue, it can, without trouble, pay the dividend upon the preferred stock herein applied for. On December 31, 1911, petitioner paid a dividend of \$112,728.75 on its preferred stock, covering the period from November 8, 1909, to that date, and on June 30, 1914, it paid a dividend upon its preferred stock in the sum of \$131,250 representing accrued dividends from December 31, 1911, to June 30, 1914. These dividends for approximately four years and eight months amounted to \$243,978.75.

The control of petitioner, as has been stated, is lodged with Mt. Whitney Power & Electric Corporation of New York, and in turn the control of Mt. Whitney Power & Electric Corporation of New York lies with Mr. John Hays Hammond. Petitioner plans to issue its preferred stock to Mt. Whitney Power & Electric Corporation of New York, and this New York holding company, it is proposed, shall then issue its preferred stock of equal amount.

From the showing made, I recommend that petitioner be granted authority to issue 4,180 shares of its preferred stock. I recommend, however, that the disposition of certain amounts of this preferred stock be held in abeyance until petitioner shall have corrected to the satisfaction of this Commission such matters as have been called to its attention herein.

Petitioner will again be before this Commission in a rate investigation, and at that time the Commission will inquire more particularly into certain litigation over water rights which may affect the company's investment of some \$117,000 in the Wolverton dam. I shall, therefore, recommend that from the proceeds derived from the sale of the stock, the sum of \$100,000 be held in the company's treasury pending further order from this Commission, and I recommend also that this \$100,000 so held be made applicable to the discharge of indebtedness now due by the corporation to its controlling interest, Mr. John Hays Hammond.

The present order, therefore, will contemplate the payment by the corporation of its indebtedness due Mr. John Hays Hammond, with the exception of \$100,000. This may the more readily be done as the applicant lists four notes due Mr. John Hays Hammond in a total sum of \$233,912.15. As the company, on June 30, 1914, paid a dividend payable almost in its entirety to Mr. John Hays Hammond in the sum of \$131,250, it will thus appear

that this arrangement may be an equitable one until the final determination of the matters heretofore referred to.

In recommending that the applicant be granted authority to issue 7,500 shares of common stock upon the return to its treasury of 7,500 shares of preferred stock, I have in mind that this is an issue of common stock merely to enable the company to eliminate such preferred stock as is now outstanding. Any authority herein granted to the applicant to issue its common stock is granted solely as a matter of reclassification of stock already outstanding, and is not intended as an issue of common stock as of itself, by reason of any value in this common stock. The authorization merely enables petitioner to make common stock of 7,500 shares of preferred stock now outstanding. This is obviously to the advantage of the corporation and to the prospective purchasers of petitioner's preferred stock.

Although petitioner has asked authority to sell its preferred stock at \$90 per share, it developed at the hearing that its financial representative believed the stock could be disposed of at \$95 per share. Accordingly, the order will so specify. At this price the money obtained will cost petitioner 7.36 per cent per annum.

For the reasons set forth in this opinion, I recommend that the application be granted and submit the following form of order:

ORDER.

Mt. Whitney Power & Electric Company having applied to this Commission for authority to issue 4,180 shares of its 7 per cent cumulative preferred stock of the par value of \$100 per share, having a total par value of \$418,000, and 7,500 shares of its common stock of the par value of \$100 per share, having a total par value of \$750,000, and a public hearing having been held, and it appearing that the purposes to which petitioner proposes to devote the proceeds from the sale of said stock are not, in whole or in part, reasonably chargeable to operating expenses or to income,

It is hereby ordered that Mt. Whitney Power & Electric Company be and the same is hereby authorized to issue 4,180 shares of its 7 per cent cumulative preferred stock of the par value of \$100 per share and 7,500 shares of its common stock of the par value of \$100 per share, on the conditions hereinafter specified, and not otherwise.

The authority to issue said \$118,000 of 7 per cent cumulative preferred stock is granted upon the following conditions, and not otherwise:

(1) Said stock shall be sold so as to net petitioner not less than \$95 per share.

(2) The proceeds from the sale of said stock shall be used for the following purposes:

(a) To apply upon the following notes and accounts:

Promissory Notes.				
In Whose Favor	Date	Date of Maturity	Rate of Interest	Amount
John Hays Hammond -----	May 15, 1914	Oct. 15, 1914	7 per cent	\$13,543 62
John Hays Hammond -----	June 1, 1914	Dec. 1, 1914	7 per cent	73,357 34
In part settlement of note due John Hays Hammond of \$126- 511.19, dated June 15, 1914, and payable December 15, 1914, inter- est at 7 per cent per annum -----				26,511 19
John Hays Hammond -----	July 1, 1914	Dec. 1, 1914	7 per cent	20,060 00
First National Bank of Visalia --	June 4, 1913	June 5, 1913	7 per cent	5,000 00
First National Bank of Visalia --	June 5, 1913	June 6, 1913	7 per cent	3,000 00
First National Bank of Visalia --	July 1, 1913	July 2, 1913	7 per cent	5,000 00
First National Bank of Visalia --	Apr. 16, 1914	Apr. 16, 1915	7 per cent	1,500 00
Anglo and London Paris National Bank -----	Aug. 7, 1913	Nov. 7, 1913	7 per cent	5,000 00
Anglo and London Paris National Bank -----	Aug. 7, 1913	Dec. 7, 1913	7 per cent	5,000 00
Anglo and London Paris National Bank -----	Aug. 7, 1913	Jan. 7, 1914	7 per cent	5,000 00
Louis Sloss & Company -----	Jan. 6, 1914	Jan. 6, 1915	7 per cent and $1\frac{1}{2}$ per cent commis- sion -----	1,000 00
Louis Sloss & Company -----	Feb. 24, 1914	Feb. 24, 1915	7 per cent and $1\frac{1}{2}$ per cent commis- sion -----	2,500 00
Amount due C. C. Moore & Company -----				9,000 00
Amount due Blyth, Witter, & Company -----				15,000 00
Reimbursement for expenditures from income for capital account -----				96,931 10
Total -----				\$287,843 25

(b) The sum of \$100,000 received from the sale of said stock shall be held in petitioner's treasury, to be applied to such purpose or purposes as shall hereafter by supplemental order be approved by this Commission.

(3) Such sum as shall remain from the sale of petitioner's preferred stock shall be held in petitioner's treasury, and shall be used thereafter either for additions and betterments or for the liquidation of indebtedness upon supplemental order from this Commission.

(4) Said 4,180 shares of preferred stock herein authorized to be issued shall be issued only after the present outstanding issue of 7,500 shares of preferred stock shall have been returned to petitioner's treasury and canceled.

The authority to issue said 7,500 shares of common stock is granted upon the following conditions, and not otherwise:

(1) Said 7,500 shares of common stock shall be issued only after 7,500 shares of preferred stock shall have been returned to petitioner's treasury and canceled.

(2) The authority herein granted to petitioner to issue said 7,500 shares of common stock shall not be interpreted or construed otherwise than as a grant of permission from this Commission to applicant in practical effect to reclassify stock heretofore outstanding, entailing in no degree a recognition of any value or values in said common stock.

The authority to issue both preferred and common stock is granted on the following additional conditions, and not otherwise:

(1) The Mt. Whitney Power & Electric Company shall keep separate, true, and accurate accounts, showing the receipt and application in detail of the proceeds of the sale of the stock hereby authorized to be issued; and on or before the 25th day of each month the company shall make verified reports to the Commission, stating the sale or sales of said stock during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's general order No. 24, which order, in so far as applicable, is made a part of this order.

(2) The authority herein granted shall apply only to such stock as shall have been issued on or before December 31, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

ILLINOIS STATE PUBLIC UTILITIES COMMISSION.

IN RE CHICAGO TELEPHONE COMPANY.

[No. 3406.]

Leases — Property not used in utility business — Consideration.

A telephone company was authorized, under a conference ruling, to make leases of such portions of its real property as were not necessary or useful in the performance of its public duties, such leases to be for terms not exceeding five years and for such rentals as will constitute a reasonable return under all the circumstances.

Leases — Property not used in utility business — Termination.

A telephone company was ordered to insert provisions in its leases of its real property not used and useful in its public duties, to the effect that such leases were subject to termination on short notice whenever in the lessor's opinion the property shall have become necessary or useful in its public business, and that they shall be terminated whenever in the opinion of the Commission the public convenience and necessity so require.

[February 4, 1915.]

APPLICATION for authority to lease real estate; **granted.**

By the **Commission**: The application of the Chicago Telephone Company, a corporation, for a general order authorizing the making of leases of real estate in the state of Illinois by the said Chicago Telephone Company in accordance with and pursuant to conference ruling No. 11 of this Commission, adopted June 5, 1914, having been duly considered, the Commission finds that said application should be granted.

It is further ordered that the petitioner, the Chicago Telephone Company, be, and it is hereby, authorized and empowered to make leases of such portions of its real property situate in the state of Illinois as may not be necessary or useful in the performance of its duties to the public. Said leases to be made for a term or terms not exceeding five years, and for such sums of money as will constitute a reasonable return under all the circumstances, and upon such other terms and conditions as may be agreed upon by the lessor and the lessee, and which are not in conflict with any of the provisions of said conference ruling No. 11 or of this order.

It is further ordered that every lease made pursuant to the authority of this general order shall contain a provision for the termination thereof, upon short notice by the lessor to the lessee, whenever, in the opinion of the lessor, the property leased shall be necessary or useful to the lessor in the performance of its duties to the public; and the further provision that said lease shall be terminated whenever, in the opinion of the State Public Utilities Commission the public interest or convenience requires it.

It is further ordered that the Chicago Telephone Company, upon the making of any lease pursuant to this order, shall file

two copies of said lease with this Commission within twenty days from the date of making said lease.

It is further ordered that copies of all leases made by the Chicago Telephone Company and filed with this Commission shall be certified by the officer or officers of said telephone company, who shall execute such leases.

It is further ordered that copies of all leases made by the Chicago Telephone Company as the lessor of any of its real property in the state of Illinois, which was not required by said telephone company for the performance of its duties to the public, and which had been executed since the 31st day of December, 1913, up to and including the date of this order and for a term of five years or less from the date of said lease, except leases to other public utilities, be and the same are hereby approved on condition that said telephone company shall file at least two copies of such leases with this Commission within twenty days from the date of this order.

This Commission reserves the right to disapprove of any lease made by the Chicago Telephone Company at the time of the filing of copies of said lease with this Commission, and may terminate any such lease at any time thereafter when, in the opinion of the Commission, the public interest or convenience requires it.

By order of the Commission this 4th day of February, 1915.
Dated at Springfield, Illinois.

ILLINOIS PUBLIC UTILITIES COMMISSION.

IN RE OBLONG GAS COMPANY.

[No. 2836.]

Depreciation — Scrap value.

Consideration must be given to scrap value in calculating the amount to be written off for wear and depreciation.

Valuation — Allowance beyond company's claim.

The Commission will allow a greater value than that claimed by a public utility if, by reason of its own investigation, it is convinced that the company is entitled thereto.

Valuation — Overhead charges — No claim by company.

The Commission will make an allowance for overhead expenses, including engineering, interest during construction, legal expenses, and

valuation omissions, in valuing a public service property for rate-making purposes, although the company has made no claim therefor.

Depreciation — Natural gas property.

A natural gas company should provide an annual allowance for depreciation.

Rates — Increase — Natural gas — Domestic use — Conservation of supply.

An increase in rates for natural gas for domestic and gas engine use was allowed in a certain service zone, for the purpose of conserving the supply, especially during cold-weather periods when the supply is limited, by preventing reckless and extravagant use already threatening the existence of the business and the interests of the citizens dependent thereon; it appearing that the increase was reasonable, that a *pro rata* increase in the gross earnings would not result, and that the revenue of the company would not be greatly curtailed by the lessened demand, that the investment of the stockholders would be temporarily protected, and that a similar increase in rates in another zone had conserved the supply and made the load more even, thus affording better service at less cost.

Rates — Schedule — "Contract gas" — Commercial uses.

A general schedule of rates for "contract gas" for commercial uses to large consumers, based on a sliding scale, classified according to the quantity used, such schedule to be open to all consumers in a similar class without discrimination, was ordered to be substituted for a schedule providing for special prices to large consumers, and requiring the filing with the Commission of a special schedule to cover each particular case, effective upon the written authority of the Commission.

Service — Natural gas — Wholesale rate versus retail rate.

A classified schedule of natural-gas rates for commercial uses to large consumers was ordered to become effective when approved by the Commission, subject to the qualification that the anticipated demand that would thus be created should not be so great as to endanger the supply of gas to domestic consumers.

Rates — Discount for prompt payment.

A natural-gas rate schedule was approved, containing a provision for a discount for prompt payment of 2 cents per 1,000 cubic feet on bills paid on or before the 10th of the month following the reading of the meter.

Rates — Minimum charge.

A natural-gas rate schedule was approved, containing a minimum charge of 50 cents for each calendar month or part thereof.

[January 21, 1915.]

APPLICATION for an increase in natural-gas rates for the purpose of conserving the supply; granted.

Appearances: R. A. Crawford and F. G. Biger on behalf of the Oblong Gas Company.

Shaw, Commissioner: On August 22, 1914, a petition was filed with the Commission by the Oblong Gas Company, Palestine, Illinois, engaged in furnishing natural-gas service to Palestine, Oblong, and adjacent territory.

Present Rate.

The rates of this applicant now in effect are as follows:

"Palestine Rate Zone.—For domestic and gas-engine service 25 cents per thousand cubic feet, meter measurement, with a discount allowance for prompt payment of $2\frac{1}{2}$ cents per thousand cubic feet on all bills paid on or before the 10th of month following the reading of the meter, or on the 11th when the 10th falls on Sunday.

"A minimum charge of \$1 will be made for each calendar month or part thereof.

"For steam-boiler service, where service is now established and the right to demand service is subordinated and subservient to all demands for other service, 15 cents net per thousand cubic feet.

"Contract gas at a rate to be fixed upon taking into account the use and quantity used, the purpose for which used, the time when used, the locality, the facilities for handling, and other reasonable considerations."

Proposed Rate.

"The petitioner stated that the present rates do not bring a fair return on the capital invested. Therefore, application was made for authority to put into effect a new schedule as follows:

"Palestine Rate Zone.—For domestic and gas-engine service 32 cents per thousand cubic feet, meter measurements, with a discount allowance for prompt payment of 2 cents per thousand cubic feet on all bills paid on or before the 10th of the month following the reading of the meter, or on the 11th when the tenth comes on Sunday.

"A minimum charge of 50 cents will be made for each calendar month or part thereof.

"Contract gas at a rate to be fixed upon taking into account the use and quantity used, the time when used, the purpose for which used, the locality, the facilities for handling, and other reasonable considerations."

The Commission investigated the complaint, and on August 24th set the case for hearing. The petitioner was required to file an inventory and appraisal of the property being used in serving the public, together with a full statement of income and operating expense. Instructions to this effect were sent to the utility, and a copy of the letter was sent to the village board of Palestine. No reply was received from the board.

Upon request by the Commission the petitioner filed an inventory of property, with statement of earnings and expense. This was incomplete, and a new appraisal was ordered filed, but this again proved insufficient for the needs of the Commission.

On October 26th formal notice was given of the case having been set for hearing in Springfield, on November 4, 1914, and on that date there appeared before the Commission R. A. Crawford and F. G. Biger on behalf of the Oblong Gas Company. On account of the appraisal, as amended, having been filed with the Commission only on October 30th, there had been no sufficient time or opportunity to check the property. Examination of the papers showed arithmetical inaccuracies. Further information was requested in reference to the claims for values on leaseholds, this item being practically the greater part of the valuation put upon the property by the utility.

The Commission reported that it would not pass upon the case until a full report and recommendation had been prepared. It was shown in the evidence that the engineering department would have to inspect the property and investigate its operation, with particular reference to earnings, expenses, maintenance, and depreciation. It was agreed to have this investigation made so that the appraisal and report of the Commission could be pre-entented and checked with similar information set forth in the statements of the utility, so that if the petitioner agreed to this report, there would be no further hearing necessary unless the village board desired to present testimony. On December 29th, a communication was sent to the village board, notifying them that the Commission was ready to issue an order in this case, but would hold the matter open provided notice was received within ten days that the village desired to offer evidence in the case.

In the absence of any reply from the village board to said notice, the case was allowed to proceed with the following result:

Report on Capitalization of Leased Gas Lands.

Subsequent to the formal presentation of the inventory and appraisal by the utility, a request was made by the manager for leave to have the case considered without reference to the value claimed by the utility for leased gas lands. It was the opinion of the utility that the value of the plant as shown by the inventory and appraisal, after being checked and amended by the Commission, would be sufficient evidence that the net return on operations would be shown to be inadequate. The utility in its petition requested a specific advance in rates for service, and did not ask the Commission to consider the case with a view to fixing a rate sufficient to earn a fair rate of return on a just valuation of the property. It was therefore thought by the utility that the rate advance for which they petitioned would not be more than sufficient to earn an income to cover a fair rate of return on the value of the property, irrespective of the debatable personalty represented by gas, in developed gas lands leased by the utility, used by it in its business.

At the present time, by virtue of this request, the Commission is not expressing an opinion for or against the theory of capitalizing gas in leased lands, and no attempt is made to indicate the policy that may be pursued by the Commission in arriving at the basis for determining the value in the event that a case of this kind is submitted for full consideration.

It is worthy of note that prior to taking the step outlined above, the utility had filed complete data on the wells and gas property under its control, in the form of pressure and volume charts carried out during the operating life of the various wells, and had supplied, in addition, figures to fix the amount and extent of the drilling operations, on live, dead, and abandoned wells. Information was collected by the Commission for consideration of this part of the case, and it was partly because of the time that would have been required to arrive at an equitable decision, that the utility requested the order be written without present reference to the amount claimed on the leased gas lands.

Section.	Commission		Utility	
	New Cost	Present Value	Cost New	Present Value
A. Land	\$3,136	\$3,136	\$3,136	\$3,136
A. Land leased, Claim withdrawn at present time (\$81,100)				
B. Transmission and distribution ...	69,340	54,379	67,049	57,273
C. Buildings	21,241	17,982	19,774	17,620
D. Plant equipment	6,600	5,920	6,659	5,083
E. General	2,205	1,412	2,185	1,420
Total A. to E. inclusive....	\$102,522	\$82,829	\$98,803	\$81,532
F. Overhead. Fixed by Commission Average of percentages applied to individual groups by Commission engineers.	15,929	12,865	15,929	12,865
Total including overhead	\$118,451	\$95,694	\$114,732	\$94,397
G. Paving—None.				
H. Material and Supplies	6,792	5,115	6,305	4,955
Total A. to H. inclusive	\$125,243	\$100,809	\$121,037	\$99,352
K. Nonoperating	300	229	300	225
Grand total	\$125,543	\$101,038	\$121,337	\$99,577

Discussion and Comparison of Valuations.

It should first be noted that grouping of items under comparable heads was done by the Commission as near as possible, because the utility made no attempt to classify its property.

Land. The valuations agree in respect to land costs, and a check on the money invested was made, during inspection of the property, to arrive at a correct estimate of the present worth.

Leased Lands. As already explained, the utility withdrew its request for consideration to a claim it had previously submitted, and it has been mutually agreed, at the request of the utility, to ignore in this case the theoretical appraisal of the utility on gas lands leased and used in carrying on the business of furnishing gas service.

B. Transmission and Distribution. The Commission has given a value to this, somewhat in excess of the amount shown in the detail costs of the utility, but the prices were carefully obtained before being finally decided upon, and there seems to be no sufficient reason for making deductions. The amount in favor of the utility, on the depreciation basis, is only \$106, although

the estimated cost new displays a greater difference, which has been accounted for, to a large extent, by the amount to be written off through wear, as noted during inspection and investigation by the Commission.

C. Buildings and Structures. After considering the depreciation due to wear and tear, it appears that the present fair value assumed as correct by the Commission, after a full investigation of the facts, is slightly in excess of the value claimed by the utility; to be exact, in the sum of \$322. The difference is somewhat greater in the comparison of the "cost new" figures, and it can be noted that this reduction of the difference when reaching the "present worth," is partly due to a difference in the per cent of condition used by the Commission, and this again is modified by consideration having been given to the scrap and salvage value,—something ignored altogether in the valuations made by the utility.

D. Plant Equipment. The figures of the utility are higher than those of the Commission in the amount estimated to cover the cost new, but are lower when arriving at the present worth, due in part to want of consideration by the utility to the scrap value when calculating the amount to be written off for wear and depreciations. The actual amount of the difference in the two valuations on depreciated plant equipment is \$837 in favor of the utility, and there appears no adequate reason for altering the calculations of the Commission.

E. General Equipment. The present worth as shown by the utility is only \$8 more than the amount allowed by the Commission. No change had been rendered necessary after fuller investigation.

F. Overhead Expense. No specific sum was claimed by the utility to cover engineering, interest during construction, legal expenses, valuation, omissions, and other items of expense usually classified as "overhead." The Commission, in accordance with custom, proceeded to calculate the amount that would fairly represent the cost to the utility, and has shown the basis of calculation. For the sake of the comparison that is to be made between the complete valuations of Commission and utility, respectively, the overhead F. has been applied to the summary of the utility appraisal, as shown.

G. Paving. There are no mains or services under paved streets or improved roads, therefore no occasion arises to compare costs.

H. Materials and Supplies. The difference in the two valuations, considered after writing off a reasonable amount for wear and tear, is \$160, and the appraisal of the Commission is higher. The unit prices are fair, and the Commission has used a greater per cent for depreciating the value than has the utility; so, all things considered, the valuation of the Commission has not been changed.

K. ———. In nonoperating, the utility has shown practically the same value as the Commission, for the same amount of material, the only difference being the showing in one case of scrap value, whereas in the other there is none; therefore, as in other instances, the depreciated value of the Commission is somewhat higher.

Conclusion. Taken as a whole, without considering working capital or going value, for which no definite claims have been made by the utility, the differences are as follows:

Cost new by Commission, \$4,206 more than by utility.

Present value by Commission, \$1,461 more than by utility.

Statement of Earnings.

Discussion of Expenses and Early History of Oblong Gas Company. The utility was organized with a capital of \$100,000 August 7, 1908, under the laws of West Virginia, with principal place of business in Palestine, Illinois, to engage in the management and operation of a natural-gas utility in Palestine and surrounding territory, divided into zones as regards rate for gas service.

The gas utility was the outcome of operations carried on by an oil-producing company, who discovered gas when drilling for oil. In 1909 the wells drilled turned out partly to be producers of gas, and these were surrendered to the utility by the refining company after payment of suitable consideration. All wells at that time were drilled by the refining company, and any gas wells that developed were turned over to the utility for approximately the cost of drilling the gas wells. This reduced the expense of utility operation by obviating speculative investment in the

drilling of wells, and this fact accounts in a large measure for the large net earnings in the fiscal year of 1909. In 1910 the companies separated, which made it incumbent upon the utility to invest speculatively in leases on lands thought to contain gas-bearing sands. This new arrangement also placed upon the utility the dead expense which accrues when wells are drilled and found to be dry. In this way the great variance is accounted for between the expenses and earnings of the years subsequent to 1909, as follows:

Period Ending Oct. 31	Gross Earnings	Expenses	Net Earnings	Dividends Paid
1909	\$40,148.09	\$13,978.76	\$26,169.33	\$9,000
1910	33,296.87	29,808.55	3,488.32	6,000
1911	20,377.73	20,030.52	347.21	3,000
1912	26,854.28	26,692.58	161.70	
1913	26,666.29	24,554.05	2,112.24	
1914	23,599.97	21,365.58	2,234.39	
Total	\$170,943.23	\$136,430.04	\$34,513.19	

The above account of expenses takes care of loss on inoperative well material, by writing off the cost of abandoning material with the exception of salvage. It does not take into consideration any gross operating expenses in the form of actual depreciation or calculated maintenance or replacement cost. When tubing and casing is withdrawn, the cost of obtaining the salvage material is charged to operating account, and the value of material so obtained is deducted from the cost before arriving at the amount to be charged to operating expense.

Details of Earnings. The utility has made, as will appear from figures given later in this report, a claim for increase in rates to make those chargeable in the Palestine zone equal to those now charged in the Oblong zone. The request seems to be the result of necessity, and is not made with the end in view of increasing the gross income, but of reducing the amount of gas sold in Palestine without greatly curtailing the revenue. It is hoped that slightly raising the rate will reduce the amount of gas now used recklessly or extravagantly. The basis for the claim is apparently well-established in the details of earnings tabulated below:

Oblong Gas Company.

Analysis of Gas Earnings for Periods Ending October 31, 1914.

Contributors	Since November 1, 1913		
	Thousands Cu. Ft.	Rate Per M.	Amount
Palestine			
Palestine Domestic Meters	378.78	22.5	8,533.11
New Hebron " "	18.25	22.5	411.11
Duncanville " "	53.63	22.5	1,207.63
Minimum charges			668.51
Premiums			68.46
Irwin Bros.	6.66	.15	99.90
Van Welch	1.98	.15	29.70
Root Penman & Co.	2.56	.15	38.40
Domestic Gas Co.	13.49	.15	202.53
J. F. Smith	3.80	.15	57.00
Fritz & Green	16.73	.15	250.53
W. W. Williams	5.32	.15	79.80
Wabash Refining Co.	2.95	.15	44.25
Meisenhelder Bros.	.64	.15	9.60
Mike Phelan	5.32	.15	79.80
	510.11	.23	11,780.57

Oblong Gas Company.

Analysis of gas earnings for Periods Ending October 31, 1914.

Contributors	Since November 1, 1913		
	Thousands Cu. Ft.	Rate Per M.	Amount
Oblong			
Oblong Domestic Meters	331.45	.30	9,943.50
Stoy " "	47.78	.30	1,433.40
Minimum charges			191.30
Premiums			48.10
Village of Oblong	33.36	.05	166.80
Village of Stoy	7.20	.05	36.30
	419.79	.281	11,819.40

Consumer Data. The case presented by the utility is based on the claim that a higher rate is calculated to conserve the gas supply, and it is therefore imperative to show by example or comparison that an order written on this request will have the desired effect. The following table has been prepared to show the trend of slightly higher rates towards reduced consumption of gas in the Oblong zone, as compared with excessive usage in Palestine due to lower rates for service. It can be seen that the greatest drain on the source of supply, and strain on the distribution system, occurs when the volume of gas is at its lowest ebb and the demand is at its highest, caused by cold weather de-

creasing the volume and pressure, and increasing the need for artificial gas to light, heat, and give energy in the territory served by the utility.

Consumption of Gas Per Month as Shown.

Meter Reading in Thousands of Feet.			February, 1914		July, 1914		Remarks
			Palestine No. in Class.	Oblong No. in Class.	Palestine No. in Class.	Oblong No. in Class.	
Less than One			1	9	16	25	
Between 1 and 2				6	21	85	
" 2 " 3			10	24	79	100	
" 3 " 4			7	37	68	88	
" 4 " 5			15	26	54	49	
" 5 " 6			19	28	30	35	
" 6 " 7			20	26	20	20	
" 8 " 9			15	25	7	8	
" 9 " 10			21	14	16	1	
" 10 " 11			15	17	1	3	
" 11 " 12			20	17	2	1	
" 12 " 13			13	14	2	3	
" 13 " 14			9	16		1	
" 14 " 15			15	12			
" 15 " 16			13	12			
" 16 " 17			13	9	1	30P	O. Restaurant P. Gas Engine
" 17 " 18			7	9			
" 18 " 19			14	6			
" 19 " 20			16	11		1	
" 20 " 21			16	8		1A	A. Restaurant
" 21 " 22			8	4			
" 22 " 23			11	4	1L		L. Gas Engine
" 23 " 24			14	6			
" 24 " 25			5	3			
" 25 " 26			8	6		1R	R. Hotel
" 26 " 27			5	4			
" 27 " 28			10	6			
" 28 " 29			9	2			
" 29 " 30			4	1	1M		M. Gas Engine
" 30 " 31			8	2			
" 31 " 32			2	2			
" 32 " 33			5	3			
" 33 " 34			2	3			
" 34 " 35			3	3	1K		K. Restaurant
" 35 " 36			4	3			
" 36 " 37			5				
" 37 " 38			4	1		1S	S. Machine Shop
" 38 " 39			2				
" 39 " 40			2	1			
" 40 " 41			2	2			
" 41 " 42							
" 42 " 43			1				
" 43 " 44			1				
" 44 " 45				1			
" 45 " 46			1				
" 46 " 47				1			
" 47 " 48			2	1			
" 48 " 49			2	2			

Consumption of Gas Per Month as Shown—Continued.

Meter Reading in Thousands of Feet.	February, 1914		July, 1914		Remarks
	Palestine No. in class.	Oblong No. in class.	Palestine No. in class.	Oblong No. in class.	
Between 49 and 50					
" 50 " 51	1A				A. School
" 52 " 53					
" 53 " 54		1		1T	T. Bakery
" 54 " 55	1	2			
" 63 " 64		1F			F. Gas Engine
" 64 " 65		1E			E. Restaurant
" 71 " 72	1				
" 73 " 74	1				
" 77 " 78	1B				B. Restaurant
" 80 " 81		1G			G. Bakery
" 87 " 88		1H			H. Restaurant
" 94			1N		N. Gas Engine
" 113 " 114		1			
" 139 " 140	1C				C. School
" 142 " 143	1D				D. Gas Engine
" 143 " 144		1J			J. Gas Engine
Total accounts ...	408	443	380	444	

Discussion on Expenses. In a previous table, figures were set out to show the total expense since formation of the utility, as compared with gross income. In order to allow more close study of the conditions from year to year, the following additional tables have been prepared.

Summary Statement of Expenses.

To July 31, 1914.

Classification.	Total to Date.	Year End. Oct. '09	Year End. Oct. '10	Year End. Oct. '11
Salaries and Expenses	nil	nil	nil	nil
Office Expense	1,041.01	179.24	190.50	181.26
Taxes	494.26	60.00	192.59	61.67
Legal	nil	nil	nil	nil
Interest	nil	nil	nil	nil
Telegraph and Telephones ..	26.98	5.25	nil	19.45
Miscellaneous	35.00	nil	nil	nil
Total General	\$1,597.25	\$244.49	\$383.09	\$262.38
Distributing	26,580.54	7,194.33	4,776.18	4,469.24
Producing	99,058.94	6,539.94	24,649.28	15,298.90
Gas Purchased	nil	nil	nil	nil
Oil	nil	nil	nil	nil
Maintaining	nil	nil	nil	nil
Total Expense	\$127,236.73	\$13,978.76	\$29,808.55	\$20,033.52

Classification.	Year End. Oct. '12	Year End. Oct. '13	Part Year July '14
Salaries and Expense	nil	nil	nil
Office Expense	190.01	165.00	135.00
Taxes	60.00	60.00	60.00
Legal	nil	nil	nil
Interest	nil	nil	nil
Telegraph and Telephone	.95	1.33	nil
Miscellaneous	nil	nil	35.00
Total General	\$250.96	\$226.33	\$230.00
Distributing	\$4,088.19	\$3,483.40	\$2,569.20
Producing	22,353.43	20,844.32	9,373.07
Gas Purchased	nil	226.33	230.00
Oil	nil	nil	nil
Maintaining	nil	nil	nil
Total Expense	\$26,692.58	\$24,554.05	\$12,172.27

The only depreciation charge in the above figures refers to the writing off of value on material taken out of abandoned wells. This is shown conclusively by the detail of the above expenses furnished in annual statements by the utility, these having been subject to the investigation by the Commission. The amount written off is arrived at by valuing the material removed, giving full credit for the pipes, casings, fittings, etc., which are considered suitable for future use. In all of the figures of expense, no attention has been given by the utility to depreciation from year to year, except as aforementioned, and no consideration has been given to deferred depreciation and maintenance. The reason is apparent, there having been no sufficient income to take care of such charges.

Analysis of Earning; Depreciation. The Commission has not endeavored to estimate the amount that should be allowed to be taken from earnings to cover the depreciation that has to be written off in order to take care of the remaining life, due to diminution of supply, and keep the investment intact. Such a calculation would be purely speculative, and would serve no useful purpose at the present time, because the utility has not asked for an order to be written on the rate for service to be charged to provide sufficient earnings to cover all legitimate expenses, and provide a fair rate of return on the property appraised by the

Commission, but has asked permission to put into effect a specific increase which will not, according to this investigation, provide sufficient revenue to earn a fair rate of return on the investment. It has been calculated, however, that the utility should provide for future depreciation not less than \$4,800 per annum, to cover natural decay of physical property, over and above the amount required to maintain the physical assets in a serviceable condition.

Table of Income and Part of Expenses.

Average gross earnings (4 years)	\$24,374.57
Average expenses	\$23,160.70
Average depreciation	4,800.00

Expense exclusive of calculated requirements to keep investment intact and without any return on investment \$27,960.70

Discussion of Earnings. The books of the utility were analyzed in an effort to get some light on the conditions existing in the two rate zones. The following figures were obtained at various times, and are set out in table form to allow of ready comparison being made:

Analysis of Gas Earnings.

District	No. of Accounts	Thousand Cu. Ft.	Rate Average	Amount	Month
Oblong	444	5,363	28.6	\$1,536.57	January, 1914
Palestine ..	403	5,923	22.7	1,345.33	
Oblong	443	5,876	28.7	1,690.63	February, 1914
Palestine ..	412	7,255	22.5	1,638.82	
Oblong	444	2,953	27.8	822.53	May, 1914
Palestine ..	414	2,959	23.8	705.88	
Oblong	445	2,272	22.72	619.23	September, 1914
Palestine ..	392	2,161	25.9	561.55	
Oblong	?	2,869	27.6	793.51	October, 1914
Palestine ..	?	3,822	22.5	860.81	
Oblong	?	41,979	28.1	11,819.40	12 Months
Palestine ..	?	51,011	23.0	11,780.57	Oct. 31, 1914

In order to indicate why the average rate per thousand cubic feet varies from month to month, the following detail tables have been prepared:

Oblong Gas Company.

Analysis of Gas Earnings for Periods Ending January 31, 1914.

Month of January, 1914.

Contributors.	No. of Accts.	Thousands Cu. Ft.	Rate Per M	Amount
Oblong				
Oblong Dom. Meters	410	4,252	.30	\$1,275.60
Stoy " "	34	771	.30	231.30
Minimum charges				10.10
Premiums				2.54
Village of Oblong		278	.05	13.90
" of Stoy		62	.05	3.13
	444	5,363	28.6	1,536.57

Month of February, 1914.

Contributors.	No. of Accts.	Thousands Cu. Ft.	Rate Per M	Amount
Oblong				
Oblong Dom. Meters	410	4,659	.30	\$1,397.70
Stoy " "	33	877	.30	263.10
Min. Charges				870.
Premiums				4.10
Village of Oblong		278	.05	13.90
Village of Stoy		624	.05	3.13
	443	5,876	28.7	1,690.63

Month of January, 1914.

Contributors.	No. of Accts.	Thousands Cu. Ft.	Rate Per M	Amount
Palestine				
Palestine Dom. Meters	335	5,131	22.5	1,155.35
New Hebron " "	14	225	22.5	50.66
Duncanville Dom. Meters	34	406	22.5	91.42
Min. Charges				19.54
Premiums				4.21
Irwin Bros.				
Van Welch				
Root, Penman & Co.		161	.15	24.15
	403	5,923	22.7	1,345.33

Month of February, 1914.

Contributors.	No. of Accts.	Thousands Cu. Ft.	Rate Per M	Amount
Palestine				
Palestine Dom. Meters	361	6,098	22.5	1,372.94
New Hebron " "	14	358	22.5	80.59
Duncanville " "	37	589	22.5	132.61
Min. Charges				13.99
Premiums				7.19
Root, Penman & Co.		90	.15	13.50
Domestic Gas Co.		120	.15	18.00
	412	7,255	22.5	1,638.82

Analysis of Gas Earnings for Periods Ending May 31, 1914.

Contributors. Oblong Ledger.	No. of Accts.	Thousands Cu. Ft.	Rate Per M	Amount
Oblong Dom. Meters	415	2,363	.30	708.90
Stoy " "	34	250	.30	75.00
Min. Charges				15.70
Village of Oblong		278	.05	13.90
Village of Stoy		62	.05	3.13
				5.90
	449	2,953	27.8	822.53

Analysis of Gas Earnings for Periods Ending May 31, 1914.

Contributors. Palestine Ledger.	No. of Accts.	Thousands Cu. Ft.	Rate Per M	Amount
Palestine Dom. Meters	364	2,357	22.5	531.65
New Hebron " "	17	116	22.5	26.13
Duncanville " "	33	294	22.5	66.24
Min. Charges				42.57
Premiums				10.79
Irwin Bros.				
Van Welch				
Root Penman & Co.				
Domestic Gas Co.		50	.15	7.50
J. F. Smith				
Fritz & Green				
W. W. Williams				
Wabash Rfg. Co.		140	.15	21.00
	414	2,959	23.8	705.88

September, 1914. Palestine.

Meters				
347	Domestic	22.5	1,559 M	\$351.67
14	New Hebron	22.5	37 M	8.38
31	Duncanville	22.5	385 M	86.69
	Minimum in all		180	86.13
	Premiums			1.68
	Domestic Gas Co.	.15		27.00
392	Average	25.9	2,161 M	\$561.55

September, 1914. Oblong.

Meters				
417	Domestic	30¢	1,762 M	\$528.60
28	Stoy	30¢	170 M	51.00
	Minimum			18.20
	Premiums			4.40
	Oblong Munic.			
	Light	5¢	278	13.90
	Stoy	5¢	68	313.
			2,278 M	\$619.23

The present rate in Palestine zone for domestic and gas-engine service is 25 cents per thousand cubic feet, gross, or, less prompt

payment discount, $2\frac{1}{2}$ cents net. The rate requested is 32 cents, less 2 cents for prompt payment, or 30 cents net. The proposed rate schedule reduces the minimum charge from \$1 to 50 cents per month per meter. The slightly higher rate per thousand feet now requested by the utility would not make a *pro rata* increase in gross earnings, and the application is not made with such intent, but rather to reduce the demand for gas during cold periods, when the supply is limited. The new rates would be similar to those now in force in the Oblong rate zone, where it has been found that the slight extra charge conserves the gas supply and makes the load more even, thus giving better service at less cost. Similar charges, it is anticipated, would reduce the amount of gas now used to excess in Palestine rate zone, and keep the gross income near the present amount with a reduction in operating expense. The relation between gas output, income, and expense, as found at Palestine and at Oblong, is clearly shown in the tables under the heading "Details of Earnings." From these it may be observed that in the twelve months ending October 31, 1914, the higher service rate in Oblong resulted in a gross income of \$11,819.40 on a send-out of 41,979,000 cubic feet of gas, whereas in Palestine the send-out was 51,011,000 cubic feet to produce an income of \$11,780.57. In other words, 9,032,000 feet more gas was sold and the income was \$38.83 less. This, notwithstanding the fact that in Oblong and Stoy 3,066,000 feet (estimated) were sold for village use at less than cost.

There can be no question that if something should not be done to prevent wasteful or uneconomical use of gas in Palestine, in a very short time the utility would be forced to discontinue in business, which would be a distinct hardship to those consumers of gas who have purchased appliances to use gas, and who have made their arrangements dependent on the service being continued. Under the circumstances the petition of the utility seems altogether reasonable, and is calculated to further the interests of the citizens as well as help temporarily to protect the investment of the stockholders. Exception is taken to the clause in reference to "contract gas," not so much to the actual intent as to the words employed. It is not desired by the Commission to prevent the sale of gas to consumers who might be desirous of using large quantities at a special price based on a sliding scale rate dependent on the quantity taken; but it is considered advisable to

change the form of the so-called "contract clause" shown in the order, thus making it possible for the utility to sell gas to large users, where and when circumstances permit, without it being necessary for the utility to file a special schedule to cover each particular case and subject to written authority of the Commission. The amended clause will allow the filing of a general schedule which will cover all possible cases, and permit of all consumers in the same class as regards amount consumed having the privilege of purchasing according to published rates, which are not and cannot become discriminatory. Thereupon the following order was issued:

ORDER.

An application in writing by the Oblong Gas Company having been presented to the Commission, praying for authority to increase the price for natural-gas service in the Palestine zone, and the Commission, before proceeding under said application so presented, having caused to be served upon the village board of Palestine, Illinois, notice of such application of the petitioner, and the purpose thereof, and notice of the hearing thereon, the said petitioner having appeared, but the other parties interested not having expressed or shown any desire to present evidence or submit testimony, and the Commission having instituted an investigation as to the matters set forth in the petition,

Now, upon said petition and after said hearing and said investigation, it is ordered by the State Public Utilities Commission of Illinois that the petition of the Oblong Gas Company be and hereby is granted, as it is considered neither unjust nor unreasonable, and the utility is therefore authorized to put in effect, as of January 1, 1915, the new rates for which application was made, to wit:

Palestine Rate Zone. For domestic and gas-engine service 32 cents per thousand cubic feet, meter measurement, with a discount allowance for prompt payment of 2 cents per thousand cubic feet on all bills paid on or before the 10th of the month following the reading of the meter, or on the 11th when the tenth comes on Sunday.

A minimum charge of 50 cents will be made for each calendar month or part thereof.

Gas for Commercial Uses. A sliding scale of rates may be arranged for larger consumers; open to acceptance by all con-

sumers in a similar class, subject to the anticipated demand that would thus be created not being so great as to endanger the supply of gas to the domestic consumers. Such rates before becoming operative are to be published in a schedule subject to the approval of the Commission, in accordance with the provisions of the utility commission law, act of 1913, and the said alternative rates shall not be discriminatory, unfair, or unjust.

By order of the Commission this 21st day of January, 1915, dated at Springfield, Illinois.

Note.—It is to be observed that the Commission does not express any opinion for or against the theory of capitalizing gas in leased lands, nor does it indicate the policy that it might pursue in arriving at the basis for determining the value. This is explained by the fact that an agreement was reached between the utility and the Commission by which an appraisal of gas lands leased and used in carrying on the business of furnishing gas service should be omitted in this case.

It should also be observed that the Commission's values of certain parts of the property are higher than those claimed by the utility itself. This is explained as being due in part to the utility's failure to consider the scrap value of plant items when calculating the amount to be written off for depreciation. The total valuation found by the Commission, though higher than that claimed by the utility, was adopted for the special purposes of the case.

It is to be observed, further that the utility claimed no specific sums to cover engineering, interest during construction, legal expenses, valuation omissions, and other items of expense usually classified as "overhead." The Commission, however, in accordance with custom, calculated the amount that would fairly cover these items, and inserted it in the valuation tables. Neither did the utility make any definite claim for working capital nor for going value.

For a full discussion of the question of allowing for overhead expenses in valuation, see note to Cedar Rapids Gaslight Co. v. Cedar Rapids, 48 L.R.A. (N.S.) 1037, on "Treatment of overhead charges in public service property valuation."

MAINE PUBLIC UTILITIES COMMISSION.

IN RE RUMFORD FALLS LIGHT & WATER COMPANY.

Rates — Reduced charges for charitable and benevolent purposes.

A light and water company was allowed to grant reduced rates to certain churches, chapels, missions, libraries, and a mechanics insti-

tute under provision of the utilities act permitting reduced rates for charitable and benevolent purposes.

Bates — Reduced charges — Public schools not charitable institutions.

Reduced rates cannot be granted to public schools under the Maine utilities act which allows reduced rates for charitable and benevolent purposes.

[February 10, 1915.]

APPLICATION for authority to grant reduced rates to certain institutions; granted in part and refused in part.

By the **Commission**: The petitioner requests the approval of this Commission, under § 32, chapter 129, of the Public Laws of the state of Maine for the year 1913, to grant its service to certain named institutions at reduced rates, such reduced rates being alleged in said petition to be for charitable and benevolent purposes.

The several institutions to which such reduced service is to be granted are named in the petition therefor. After consideration, and having in mind the fact that the petitioner has heretofore granted its service to the same institutions at reduced rates, and it appearing that the institutions named in the order herein made are institutions maintained for charitable and benevolent purposes,

It is ordered that this Commission approve of the granting of the service of the petitioner at the reduced rate named in said petition, to the following institutions, namely: In the town of Rumford, to the Rumford Mechanic Institute, at its building and halls, First Baptist Church, Methodist Church, Methodist chapel, St. Johns Church, Episcopal Church, St. Athanasius Church, Universalist Church, Italian Brotherhood Mission, Rumford Library; in the town of Dixfield, Congregational chapel, Congregational Church, Dixfield Public Library; in the town of West Peru, Baptist Church; in the town of Mexico, Free Baptist Church, Congregational Church. As to the other institutions mentioned in the petition above referred to, this Commission withholds its approval of the request therein made, for the reason that such other institutions named are public schools in the several towns, and do not come within the meaning of the legal definition of the words used in the utilities act; namely, charitable and benevolent purposes.

Public Utilities Commission, Benjamin F. Cleaves, Wm. B. Skelton, Chas. W. Mullen.

Note.—The Commission also authorized the granting of free and reduced rate transportation, under § 32 of chapter 129, Public Laws of Maine, 1913, to officers, children, inmates, students, and individuals of various charitable and benevolent organizations, in the following cases:

Re Augusta, G. & B. S. B. Co. February 1, 1915; Re Aroostook Valley R. Co. February 1, 1915; Re Bangor & A. R. Co. February 2, 1915; Re Maine C. R. Co. February 8, 1915.

MASSACHUSETTS BOARD OF GAS & ELECTRIC LIGHT
COMMISSIONERS.

IN RE NORTHAMPTON GAS PETITION.

Service — Gas — Standards.

A contention in a rate case that, because of certain changes in the process of manufacture, gas supplied consumers has less value than formerly, before the installation of water gas apparatus, is not material when it appears that the company has complied with the standards of candle power and purity established by the state, and that no undue pressure has been employed.

Apportionment — Operating expense — Appliance store.

The rent of a gas company's office, also used as an appliance store, is a reasonable operating expense, although to the extent to which the office is used as an appliance store the rent is an expense connected with the sale of appliances, and only the net loss, if any, incurred thereby, should be introduced as an operating expense.

Evidence — Burden of proof — Reasonableness of increased expenses.

A substantial increase in the general office and management expenses of a public-service corporation throws the burden of justifying such increase upon the company.

Return — General expenses — Extravagance.

General office and management expenses are unreasonably high where it appears that they are more than experience shows to be necessary for skilful and efficient management, and that an association which owns the company is making an unwarranted profit on the services of those managing the company, and where no decrease in unit costs follows any increase in output.

Return — Extravagant operating expenses — Effect.

Extravagant operating expenses of a public utility should be reduced, or the company should be made to suffer a corresponding reduction in the return, since the public, while not interested in the apportionment of a given sum between dividends or management costs, is clearly interested when the combination of such costs is unreasonably high.

Valuation — Unreliability as basis for rates.

A valuation of the property of a public utility by the reproductive method in rate cases, even though free from the bias necessarily attending the findings of experts representing their respective employers, has to be based upon premises and experiences open to a wide range of debate, and its only purposes are to ascertain a figure upon which a return may be computed, with only such aid in dealing with the rate of return as is afforded by the demands of investors with respect to securities, which, in their turn, have little or no relation to the valuation of the property which they represent.

Rates — Reasonable return — Basis of determining — Capitalization.

A reasonable return can be determined upon broader and firmer grounds than those afforded by valuation of the property by the reproductive method, when there exists such a policy as that declared by the Massachusetts statutes, primarily adopted to restrict the original issue of capital stock of gas companies to the actual investment made by stockholders, to prohibit stock dividends, and to limit additional stock or bonds to such amounts only as are reasonably necessary for authorized purposes, all with a view to keeping down the dividend burden which the public must meet in the rates charged.

Return — Confiscation — Statutes regulating stock issues.

Statutes designed to restrict the issue of stock to the actual investment are not in themselves confiscatory.

Constitutional law — Statutes regulating stock issues.

Statutes designed to restrict the issue of stock to actual investment do not operate to deprive the companies of their property without due process of law or of the equal protection of the law.

Return — Reasonableness — Capitalization.

The reasonableness of the return to a public utility operating under a statutory policy limiting its capitalization to actual investment is to be related, not merely to what may be regarded as the value of the property, but to the legitimate capital stock outstanding and representing such property.

Return — Elements affecting — Reward for efficiency.

The manner in which plant value has been created, the policy pursued in the issue of securities, the intelligence, honesty, and prudence of the management, have an important bearing on the amount of the return divisible among the stockholders, such factors affording an effective stimulus to a recognition by managements of the common interests of both stockholders and consumers.

Return — Reasonableness — Confiscation.

A rate is to be held confiscatory, if at all, because it may fairly be expected in its effect upon future business to operate to deprive the company of the reasonable earning power of its property.

Valuation — Capitalization of earnings.

Earning power as a test of value cannot be capitalized when the basis of earning power, the rate or price, is itself in question.

Valuation — Reproduction cost — Not sole test of earning power.

The cost of reproduction is not the sole controlling test of earning

power, especially when the rates yield all that the capital employed under statutory restrictions limiting stock issues to investment has ever required.

Return — Reasonableness — Elements to be considered.

The value or original cost of a property, the market value of stocks, or any of the other factors in a proceeding to determine the rates to be charged, are important only so far as, together, they aid to a correct conclusion as to the rate that shall be fair alike to the company and to the public, and this conclusion must rest until vindicated by experience, not in a mathematical demonstration, but in the exercise of sound judgment.

Return — Confiscation — Reproduction cost.

It is unnecessary, in order to avoid the charge of confiscation, to base rates solely on the cost of reproduction of the property, where such a basis would logically give the company an indefeasible right to increase rates, which already yield reasonable dividends on a capitalization limited to actual investment.

Return — Reasonableness — Reproduction cost.

A return based solely on the cost of reproduction of the property would be unreasonable to the public, where such a basis would logically give the company an indefeasible right to increase rates which already yield reasonable dividends on a capitalization limited to actual investment.

Rates — Gas — Reduction.

Rates for gas were reduced from \$1.10 to \$1 per thousand cubic feet, where it appeared that operating expenses were unreasonably high and that such rates would yield sufficient operating expenses, including depreciation and a fair return upon the value of the property which the company was actually and necessarily employing for the public convenience, and where it further appeared that the capacity of the present plant would take care of a very considerable increase in output without any substantial increase in investment, although, on a reproductive method of valuation alone, the company might have been entitled to increase its rates.

[January 30, 1915.]

COMPLAINT as to the price of gas; reduction recommended.

Weed, Chairman: This is a complaint in writing, under the provisions of § 34 of chapter 121 of the Revised Laws (now § 162 of chapter 742 of the Acts of the year 1914), by the mayor of the city of Northampton, of the price of gas supplied by the Northampton Gaslight Company.

After due notice, public hearings were held by the Board upon this complaint in Northampton, at which the mayor was represented by the city solicitor, and the company by counsel.

This company serves a population of somewhat more than 19,-

000. It makes and sells a mixed coal and water gas, and charges a maximum net price of \$1.10. For some time before the filing of this complaint there had been negotiations between the city council and the officers of the gas and electric companies (who were the same for each company) relative to their prices and service. During the course of these negotiations the company expressed its purpose to make a further reduction in 1912 to \$1.10, and to \$1.05, provided there was a certain increase in output, and in any event by 1913. It also offered a further reduction to \$1 in 1915, provided "that the cost of material and other matters entering into the manufacture of gas, over which the company has no control, shall remain substantially the same as at present." But these offers became involved in the question of a street light contract and the prices for electricity. While the promised reduction to \$1.10 was made in 1912, no further reduction has since been made.

During the course of the hearings a number of complaints respecting the service afforded individual customers were submitted, which appeared to have been largely to local conditions affecting the distribution system, or to disputes over the amount of the bills rendered certain customers. These are matters which should be dealt with individually, and have no material relation to the real issue involved in this case. The Board required the causes for these complaints to be eliminated, but in case they have not been corrected its authority may be invoked at any time upon the request of the parties immediately concerned. Although the only issue raised by the complaint was as to the price, yet it was claimed in behalf of the city that, because of certain changes in the process of manufacture, the gas now supplied has less value to the customer than that formerly supplied before the installation of the water gas apparatus in 1906. It is fair to say that the company has complied with the standards of candle power and purity established by the state, and that no undue pressure appears to have been employed. Until, therefore, further investigation indicates the desirability of establishing different standards, and the legislature has acted, this particular contention does not seem to be material to the decision of this case.

The company was incorporated in 1853, and the original capital stock of \$50,000 was in part issued in 1860 and the balance

in 1871. In 1869 it was authorized by special act to increase its capital to \$100,000, but no additional stock was in fact issued until 1900. The outstanding capital is now \$120,000, and upon the recent issues premiums amounting in all to \$16,400 have been realized. On June 30, 1914, besides its plant, which was carried at a book value of \$192,338, it had other assets, including tenement property, etc., of \$50,409, against which there were outstanding its capital stock of \$120,000, notes of \$59,500, and other debts of \$12,944.

Since the company began making returns to the Board in 1885 it has never failed, except in 1887, when it paid 6, to pay a dividend of at least 8 per cent. In a number of years prior to 1908 dividends in substantial excess of 8 per cent were paid. In 1908 its dividend rate was raised to 10 and in 1909 to 12 per cent, a rate since maintained with a large extra dividend in 1912. Notwithstanding these dividends, a considerable proportion of the amount expended upon additions and extensions to its plant and property during this period has been provided from the earnings. Much of the original generating equipment and apparatus at the works, including the original holder, have disappeared or been replaced. The company's output during the year ending June 30, 1914, was 73,547,000 cubic feet, a substantial increase over the preceding year.

At the hearings it was contended in behalf of the city that the net cost of gas supplied to customers was unreasonably high. By reductions in certain items relating to the cost of coal, office rent, management, and distribution expenses, and in the allowance for repairs, renewals, and depreciation, it was claimed that the cost could be so reduced that at a price of 95 cents, with no increase in output, there would still be earnings available for dividends sufficient to pay 8 per cent on the outstanding capital stock.

Considerable evidence was offered on both sides with respect to certain items in the operating expenses. One item was the cost of coal, and the figures under consideration were admitted by the company to include a substantial commission to the Light, Heat, & Power Corporation, a company owned by the same association and acting as a purchasing agent for the Northampton company. Under arrangements since consummated the management of the Northampton company has been assumed by the Gas & Electric

Improvement Company, another corporation owned by the association, which undertakes, as a part of the services for which it is paid 7 per cent of the gross earnings of the Northampton company, to purchase its supplies at cost. Another item invoked by the company was the high cost of oil then prevailing. But this cost has reached substantially its former level. Some adverse comment was also directed in behalf of the city to the rent of the office and appliance store, but the Board sees no reason for considering this an unreasonable operating expense, although to the extent to which this office is used as an appliance store the rent seems to be an expense connected with the sale of appliances, and only the net loss, if any, incurred thereby, should be introduced as an operating expense, a practice which now seems to have been adopted by the company.

Since the present management has assumed control, there has been a substantial increase, however, in the general office and management expenses. These expenses, exclusive of the rent of offices, for three years preceding the change from local ownership and for the succeeding years, have been in amount and computed per thousand feet as follows:—

	Amount.	Per M Sold.
1908	\$ 5,345 26	\$0.1115
1909	5,330 05	.1057
1910	10,238 26	.1893
1911	14,412 08	.2464
1912	11,375 41	.1893
1913	11,294 25	.1639
1914	12,697 62	.1727

It is doubtless true that while this comparison is not conclusive evidence that the company's present operating expenses are excessive in this respect, yet it throws the burden upon the new management to justify the increase. The Board is of the opinion that this burden was not sustained, and its investigation makes clear that not only are these costs higher than experience shows is necessary for skilful and efficient management, but that the association, by the device of the management company, is in fact making an unwarrantable profit on the services of those actually engaged in the management of the Northampton company. The Board in a similar situation has observed that "the management, if it

desires, may choose between profits and a high operating cost, and only the stockholders are interested as to whether a certain amount of income is retained for dividends or expended for management. But even if the public be not interested in the apportionment of a given sum between dividend and management cost, yet they have clearly an interest when the combination of such costs is unreasonably high." By the arrangement now in force it is also to be noted that, so far as management costs are concerned, no decrease in unit cost follows any increase in output. Full advantage of such decrease goes to the owners of the property, and none to the public. In reaching its conclusion as to price, the Board has been influenced by the opinion that a substantial reduction in this feature of the operating expenses should be made, or the company should suffer a corresponding deduction in the return allowed.

It is difficult to determine reliably the original cost of the company's property which it now owns and is employing for the public convenience. From the issue of the original \$50,000 capital stock up to 1900, it was the company's policy to pay for all improvements and additions to its property out of earnings, charging its construction accounts into profit and loss. In 1885, at the time of its first return to this Board, its plant was carried at a book value of \$36,625. Since that year its expenditures for construction appear to have been in excess of \$235,000. From these facts it is evident that the company has expended more than \$270,000 upon its property in the nearly sixty years of its existence. Meanwhile certain of the buildings, holders, mains, and apparatus have been displaced or abandoned, and the company has depreciated its plant accounts, in the thirty years during which it has made returns to the Board, to the aggregate amount of over \$90,000. It is clear that the money which the stockholders have actually invested in the business, or hired for its use, does not exceed in all \$195,000.

Upon this phase of the case both parties submitted valuations. That submitted by the city was based upon the estimated present "reproductive" cost of the property used by the company in its gas business, or the "reproductive" cost of equivalent items of property capable of performing the same service equally well. To determine the present value of the property, the city's expert

deducted from this cost such amount as appeared to him reasonable for the depreciation or loss in value. The results so reached showed a reproductive cost of \$220,964 and a present value of \$174,904, to which was added \$5,000, because the mains are now covered to a considerable extent by macadam paving. In this valuation the item of land is estimated at \$2,670 and cost of the buildings at \$29,000 and their present value at \$23,200.

The company submitted a valuation made by a gas engineer of considerable operating experience, who died pending the hearings, and was not, in consequence, cross examined upon his valuation. He undertook, item by item, to give the "replacement value" of all of the property owned by the company as of substantially the same date used by the city's expert. These figures were depreciated to obtain the present value of the property, presumptively based upon his examination of its condition and his experience, although not described in detail, owing to his decease. For the land occupied by the gas works he used the assessors' valuation. The results reached showed a "replacement value" for the plant of \$354,777, and a "present value" of \$311,149. In this valuation the gas-works land is placed at \$39,300, which appears to include land under the tenement houses at \$12,000, and the "replacement value" of the buildings is estimated at \$46,130 and their "present value" at \$32,750. He also valued the tenement houses, horses, wagons, and office furniture, but these figures are omitted for purposes of comparison. In his testimony offered prior to the submission of his valuation, he expressed the opinion that the plant was well located, in good average condition, with a capacity for double its present output, and that its capacity could be still further substantially enlarged in its present location.

Under some circumstances the market value of the company's stock might offer an indication of the value of its property. In this case, however, ever since the purchase of its stock by the Massachusetts Lighting Companies in 1910 at a large premium, the stock has been withdrawn from the market and held as one of the assets against which the securities of that association have been issued. There is consequently no present established market value for this company's stock.

The testimony in this case, which has been briefly and, as the
P.U.R. 15A.—40.

Board believes, fairly described, exhibits the usual irreconcilable results reached by experts valuing property by the reproductive method in rate cases, and who of necessity realize the importance of the result to their respective employers. But if a valuation was made free from all bias, it too would have to be based upon premises and experiences open to wide range of debate. Even then its only purposes would be to ascertain a figure upon which a return might be computed, with only such aid in dealing with the rate of such return as is afforded by the demands of investors with respect to securities which, in their turn, have little or no relation to such valuation of the property which they represent.

There is broader, and the Board believes firmer, ground upon which the disposition of this case may properly rest. Throughout the history of this company the laws, deliberately adopted and consistently pursued, have provided a definite scheme for the regulation of the gas companies. Its foremost characteristic has been and still is a purpose to restrict the original issue of capital stock to the actual investment made by the stockholders, to prohibit stock dividends, and to limit additional stock or bonds to such amounts only as are reasonably necessary for the purpose for which the same are authorized, and, in the case of stock, are required to realize the requisite amount of money in view of market conditions,—all with a view to keeping down the dividend burden which the public must meet in the rates charged. It cannot be successfully claimed that these laws are in themselves confiscatory, or operate to deprive the companies to which they apply of their property without due process of law or of the equal protection of the laws. Neither, in the opinion of the Board, can any sound judgment be reached of the fair return to be allowed upon a property acquired under a franchise granted and exercised under such restrictions and limitations, if their beneficial purpose is to be utterly ignored. This would be to observe one rule during the development of a company's capacity to provide adequate service at reasonable rates, and to test its effect by another and quite inconsistent rule. And yet obviously this may be the result if valuations are relied on as the sole, primary, and determining factor in rate cases.

A reasonable return under a policy so clearly declared and long continued is not perhaps susceptible of an absolute determina-

tion, and may be such an amount to be realized from the conduct of the business as, after providing for all other necessary and proper corporate requirements, will permit a reasonable dividend to the stockholders. The reasonableness of such return is to be related, not merely to what may be regarded as the value of the property, but to the legitimate capital stock outstanding and representing such property, whose value is usually appreciably greater or less than the par value of the capital stock, but rarely, if ever, identical with it. Where it appears to be greater it will be found to be due either to investment in plant out of income, or to some unearned increment of value in the plant from causes arising outside of the corporation itself. The manner in which such value has been created, the policy pursued in the issue of securities, the intelligence, honesty, and prudence of the management,—all have an important bearing on the amount of the return divisible among the stockholders, and of necessity will lead to apparently different results in different companies and in the same company at different times. This is the only policy, having due regard to a proper reward for efficiency, which seems to the Board to afford an effective stimulus to a recognition by managements of the common interests of both stockholders and consumers.

It is true that courts have decided rate cases in which little or no evidence was offered save with respect to the values of the properties involved, based upon their reproductive costs. But they have not yet said that this is the only test, or even that the trial court or the public board, whose action is questioned, must reach and state a definite finding as to value. Other elements have been expressly enumerated as “matters of consideration . . . to be given such weight as may be just and right in each case.” A price is to be held confiscatory, if at all, because it may fairly be expected in its effect upon future business to operate to deprive the company of the reasonable earning power of its property. It is illogical to capitalize earning power as a test of value when the basis of earning power, the rate or price, is itself in question. But it is equally fallacious to assert broadly that cost of reproduction is the sole controlling test of earning power, especially when the price yields all that the capital employed under the restrictions and limitations, which have been described,

has ever required. In this proceeding the issue is the price to be hereafter charged by this company, and the value or original cost of its property, the market value of its stock, or any of the other factors which have been considered, are important only so far as together they aid to a correct conclusion as to a price which shall be fair alike to the company and the public. Of necessity this conclusion must rest until vindicated by experience, not in a mathematical demonstration, but in the exercise of a sound judgment.

Concretely the company is defending its present price upon a basis which logically gives it an indefeasible right to increase that price, even though the maintenance of the present price is not necessary for the payment of the liberal dividends heretofore regularly paid. Such a result is not required to avoid the charge of confiscation, and would be unfair to the public. In view of all the circumstances of this case, and of what has been said, not only with respect to the question of return, but of reasonable operating expenses, the Board is of the opinion that the price hereinafter recommended is fair and reasonable, and will yield enough to provide for all proper operating expenses, including depreciation and a fair return upon the value of the property which the company is actively and necessarily employing for the public convenience.

While some evidence was submitted and views expressed at the hearings with respect to depreciation, the Board has not deemed it necessary to discuss this matter specifically. But due consideration has been given to this problem because it has an important relation to the physical condition and efficiency of the property, and to the provision to be made in the future earnings. The Board has also been influenced in this consideration by the amount of the provision heretofore made therefor by the company out of its earnings, by its expenditures for repairs, and by the capacity of the present plant to take care of a very considerable increase in output without any substantial increase in investment.

The Board recommends that on and after the 1st day of February next the net price of gas sold by the Northampton Gaslight Company shall not exceed \$1 a thousand cubic feet.

For the Board Alonzo R. Weed, Chairman.

For conditional acceptance of the recommendations, see Appendix, post, —.

NEW JERSEY PUBLIC UTILITY COMMISSION.

IN RE HOLLY BEACH, WILDWOOD, & NORTH WILDWOOD
WATER COMPANY.

Sale — All corporate assets except charter — Disapproved as virtual dissolution.

An agreement for the sale by one water company to another of all its property, rights, and franchises, except the franchise of being a corporation, will not be approved, since this would amount to a virtual dissolution of the company in a mode not prescribed by law.

[February 9, 1915.]

PETITION for authority to transfer all assets; dismissed.

Appearances: Ernest Watts for petitioner; J. Charles Winters and Samuel K. Robbins for objectors.

Donges, President: The Holly Beach, Wildwood, & North Wildwood Water Company is a corporation under the laws of this state, and is incorporated under an act entitled "An Act for the Construction, Maintenance, and Operation of Waterworks for the Purpose of Supplying Cities, Towns, and Villages of this State with Water," approved April 21, 1876, and the acts supplemental thereto and amendatory thereof. The company has a capital stock of \$100,000, divided into one thousand shares of the par value of \$100 each; seventeen shares of this stock are now issued and outstanding. The company, by virtue of an ordinance passed December 29, 1908, has consent and permission to lay its water mains, pipes, and conduits under, beneath, and through all or any of the streets, avenues, alleys, and public places now or hereafter laid out within the borough of Holly Beach City. Most of the company's mains, pipes, and conduits are laid on Railroad avenue in said borough.

The Wildwood Waterworks Company is also a corporation of this state, incorporated under the same act, and has a franchise extending throughout Five Mile Beach, which includes the same territory served by the said Holly Beach, Wildwood, & North Wildwood Water Company.

The said companies entered into an agreement dated the 4th day of November, 1914, under and by virtue of which the Holly Beach & North Wildwood Water Company agrees to grant, bar-

gain, and sell, assign, transfer, and set over unto the Wildwood Waterworks Company all its property, rights, and franchises (except the franchises of being a corporation) for the sum of \$1,700.

Application is made to this Board for approval of said agreement under subdivision (h) § 18, chapter 195, Laws 1911 ("public utility act," so-called). This provides:

"18. No public utility as herein defined shall:

"(h) Without the approval of the Board sell, lease, mortgage, or otherwise dispose of or encumber its property, franchises, privileges, or rights, or any part thereof; nor merge or consolidate its property, franchises, privileges, or rights, or any part thereof, with that of any other public utility as herein defined. Every sale, lease, mortgage, disposition, encumbrance, merger, or consolidation made in violation of any of the provisions hereof shall be void and of no effect. Nothing herein contained shall be construed in anywise to prevent the sale, lease, or other disposition by any public utility as herein defined of any of its property in the ordinary course of its business."

It appears that there are six stockholders of the Holly Beach, Wildwood, & North Wildwood Water Company owning seventeen shares of stock, issued and outstanding; that four of said stockholders owning fourteen shares of stock, at a meeting called for that purpose, approved the transfer; and that resolutions by each company were passed looking to the consummation thereof.

It further appears, however, that two stockholders owning three shares of stock of said company object to the approval of the agreement by this Board on the ground that said transfer amounts to and in effect is a dissolution of said company, and that the method provided for in chapter 185, Laws 1896 (the general corporation act), and the acts supplemental thereto and amendatory thereof, should be adopted.

The petitioner, nevertheless, insists that the Board should approve said agreement, on the theory that the transfer is a sale merely, and does not amount to a dissolution of the company; that the company was incorporated under the "water act," cited supra, and that the provisions contained in the general incorporation act respecting dissolution do not, therefore, apply.

In *Coler v. Tacoma R. & Power Co.* 65 N. J. Eq. 347, 103

Am. St. Rep. 786, 54 Atl. 413, the Tacoma Railway & Power Company, a corporation organized under the laws of this state, made an arrangement with the Seattle-Tacoma Interurban Railway Company, a corporation organized under the laws of the state of Washington, to transfer all its property and franchises (except the franchise of being a corporation), for certain considerations. A bill was filed by a stockholder of the New Jersey company to prevent the consummation thereof, on the theory that the transfer of all the company's property and franchises was in effect a dissolution of the company, and that the method prescribed in the general incorporation act respecting dissolutions should be pursued.

Dixon, J., delivering the opinion of the court (p. 349) says: "A corporation which has sold only its property, receiving therefor a valuable consideration, is still able to engage in new enterprises within the scope of its charter, but one which has parted with all its franchises except that of existence is for all purposes, outside of the winding up of its affairs, defunct. It is in the exact condition contemplated by our statute as that of a dissolved corporation, for the 53d section of our corporation act (P. L. of 1896, p. 277) provides that 'all corporations, whether they expire by their own limitation or be annulled by the legislature or otherwise dissolved, shall be continued bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them to settle and close their affairs, to dispose of and convey their property, and to divide their capital, but not for the purpose of continuing the business for which they were established.' That such dissolution was regarded as the practical effect of the present arrangement, and so intended by the directors and stockholders who favored it, is made evident by the fact that, at the same meetings at which the arrangement was approved, they voted for a formal dissolution of the company under the statute. The mode in which a New Jersey corporation can voluntarily effect its own dissolution is prescribed by § 31 of our act, and of course no other mode can legally be adopted. It is conceded that this mode was not pursued, and it seems, necessarily, to follow that the plan which involves dissolution is not yet capable of lawful consummation."

While it does not appear that the Tacoma Railway & Power

Company was incorporated under the general incorporation act of this state, yet even if it were, in view of the fact that there is no decision of our courts to the contrary, the Board is of the opinion that the language used in the case cited is so strong and so broad that it is controlling in a case where the company is incorporated under a special act. In this proceeding, as in the case cited, all that will remain after the transfer or sale is the franchise of being a corporation; the purpose for which this corporation was organized has come to an end, and it is for all purposes, outside of the winding up of its affairs, defunct, and should be dissolved.

The Board does not express any opinion as to the desirability of the acquisition of the property by the Wildwood Waterworks Company, but withholds its approval for the reasons above stated. The petition will be dismissed.

Board of Public Utility Commissioners, by Ralph W. E. Donges, President.

NEW JERSEY PUBLIC UTILITY COMMISSION.

IN RE STANDARD GAS COMPANY.

Security issues — Replacements.

Stock should not be issued to cover the amount expended for the retirement of an old water gas set and other items connected with it.

Security issues — Charges to construction after operation begins — Salaries.

Portions of the salaries of the regular employees of a gas company whose principal duty is the maintenance and operation of the plant and system should not be charged definitely to construction, and thereby included as capital charges for a proposed bond issue, when the company was, at the time of such construction, operating as a going concern, unless the respective salaries are carefully divided between construction and operation, and carried on the books in this way.

Security issues — Working capital — Permission withheld — Violation of law.

Authority will not be given a gas company to issue bonds to produce funds for working capital, where it appears that the need therefor is due to its having pledged a previous issue of bonds as collateral for notes amounting to less than 70 per cent of the par value of the bonds, the statute requiring bonds to yield at least 80 per cent of par.

Security issues — Sale price — Pledge as issuance.

The use of \$98,000 par value of bonds as collateral for \$65,492 of notes contravenes an act requiring that bonds may not be issued at less than 80 per cent of par.

Security issues — Extensions and additions — Permission withheld — Violation of law.

Approval of an application by a gas company for authority to issue \$22,195 par value of bonds at 80 per cent of par, to be used in paying for extensions and additions, was withheld, pending correction by the company of certain conditions relative to an illegal pledge of a prior issue of bonds.

[February 9, 1915.]

APPLICATION for authority to issue bonds; refused.

Appearances: Harry Stille and H. E. Woodman for the applicant.

By the **Commission**: The Standard Gas Company was formed by consolidation of the Standard Gas Company of Keyport and Matawan with the Atlantic Highlands Gas Company, this consolidation having been approved by the Board April 22, 1913.

Under the terms of the consolidation, a new mortgage was created in the aggregate sum of \$1,000,000, and an issue of bonds thereunder was approved to the extent of \$630,000, to be used for the purpose of refunding outstanding bonds of the subsidiary companies, to liquidate existing debts, and to provide for additions and extensions then necessary.

Application now before the Board is the first submitted since the time of the consolidation. This application bears date November 19th, 1914, and is for the approval of the issue of bonds at 80 in the par value of \$22,193, the proceeds of these bonds to be used in paying for extensions and additions, in addition to those authorized at the time of the consolidation forming the company. In the last application of the company it was stated that the extensions and additions referred to amounted to \$17,754.78. This was very carefully checked over, and it was found that there should be certain deductions which had not been made because of the retirement of the old water gas set and other items connected with it. The amount at which the old water gas set had been valued in the appraisal made of the company's property at the time of consolidation was \$6,500, and it therefore

appears that the net additions to capital value amounts only to \$11,254.78.

In the application submitted by the company it appears that the prices charged to the company by the Union Railway Supply Company included an allowance of 10 per cent for contractor's profit, administrative expenses of the home office, rental of the home office, etc. In addition to this, the charge has been included of \$5,000, under the head of Engineering and Superintendence; this \$5,000, however, representing portions of the salaries of the local superintendent and of the president. A strict interpretation of capital charges may include portions of the time of the superintendent and president respectively; but the Board does not consider it a wise policy on the part of a going concern to charge definitely to construction, and thereby capitalize, portions of the salaries of the regular employees of the company whose principal duty is the maintenance and operation of the plant and system, unless the respective salaries are carefully divided between construction and operation, and carried on the books in this way. The testimony does not disclose that this has been done. The company contended that the full amount of bonds asked for in the application would be required to enable them to properly finance the outstanding obligations, and claimed that, if the amount of bonds asked for was not justified by the charges made to capital account during the period referred to, the Board should give consideration to the issuance of a sufficient amount of bonds to produce funds which could be used for working capital. In any case, the company contended that the full amount asked for was requisite.

Examination of the report on the valuation of the property of the company made to the Board under date of March 26th, 1913, at the time of the consolidation, shows, on page 4, that an allowance for working capital amounting to \$31,904 was included. Working capital has, of course, to be increased from time to time, as the business of the company increases, and it might be reasonable to allow the increase of capitalization to an extent sufficient to provide \$5,000 of working capital. Before approval is given to this, however, it should be noted that of the bonds issued under the approval of the Board of April 22, 1913, bonds to the amount of \$98,000 are outstanding as col-

lateral for notes to the amount of \$65,492. The latter amount is less than 70 per cent of \$98,000; and in the opinion of the Board the use of these bonds as collateral under these conditions is a contravention of the act of 1906, which requires that bonds may not be issued at less than 80.

The Board has heretofore expressed its unwillingness to approve the issuance of bonds for use as collateral, unless the Board has full knowledge of the same, and approves such use in each specific instance.

The application now before the Board states that the bonds are to be used as collateral, or for the purpose of obtaining funds to liquidate outstanding indebtedness.

The need of the company for additional working capital appears to be due to the conditions under which the bonds referred to above have been handled. Under the terms of the act of 1906 the bonds to the amount of \$98,000 should have brought to the company an amount not less than \$78,400. It appears that this lot of bonds is pledged as collateral for \$65,492 of notes. This amount is less by \$12,908 than the least amount which the law of 1906 recognizes as the proper proceeds for the bonds in question.

In view of the conditions under which bonds of a former issue to the amount of \$98,000 have been disposed of, although temporarily, the Board will withhold its approval of the present application until the condition referred to above, which, in the judgment of the Board, constitutes a violation of the law, has been corrected.

Board of Public Utility Commissioners, by Ralph W. E. Donges, President.

NORTH CAROLINA CORPORATION COMMISSION.

COMMISSIONERS OF HARNETT COUNTY

v.

ATLANTIC COAST LINE RAILROAD COMPANY.

Railroads — Overhead bridge — Elimination of grade crossing.

A railroad company and county were ordered, on petition of the county, jointly to construct a railroad bridge over the tracks of the

company to accommodate a new county road, and to eliminate a grade crossing.

Railroads — Distribution of crossing costs.

The cost of constructing a steel bridge over the tracks of a railroad company to accommodate a new county road was ordered to be borne, one third by the county, and two thirds by the railroad company.

[February 10, 1915.]

PETITION for construction of overhead steel bridge; granted.

Pell, Commissioner: This cause coming on to be heard upon a petition of the board of county commissioners of Harnett county, asking that the Corporation Commission order the building of an overhead bridge across the Atlantic & Yadkin Railroad by the Atlantic Coast Line Railroad Company, at a point 1 mile south of Olivia station, to accommodate a new county road being built across the said railroad at that point, the Commission heard evidence in the case at its office in Raleigh on January 19, 1915; and it appearing that the public interest demands the erection of said overhead bridge and the elimination of the grade crossings, it is therefore —

Ordered, that the Atlantic Coast Line Railroad Company, together with the county of Harnett, state of North Carolina, jointly construct a steel bridge of the width of 16 feet, across and over the track of the Atlantic & Yadkin railroad at a point about 1 mile south of Olivia station, southeast of mile post 107, as designated on the attached map filed in this cause by the said Atlantic Coast Line Railroad Company; that the costs of construction of the said overhead steel bridge shall be divided, one third to be paid by the county of Harnett, and two thirds to be paid by the Atlantic Coast Line Railroad Company.

That said bridge be constructed before May 15, 1915.

NORTH CAROLINA CORPORATION COMMISSION.

**IN RE FREIGHT SHIPMENTS BY COMPETITIVE ROUTES
AND BETWEEN COMPETITIVE POINTS.**

Rates — Competitive routes — Rates applicable to shortest route.

The Commission issued a temporary order permitting all railroad companies to transport freight, for a period of sixty days, between

competitive points, by other than the most direct route, at the legal rate applicable to the shortest and cheapest route, in order to facilitate the prompt movement of certain commodities.

[February 9, 1915.]

APPLICATION to decrease rates; granted.

By the **Commission**: Application having been made to the Commission for relief under § 1107 of the Revisal, re-enacted by act of the general assembly ratified February 5, 1915, the following general order is made:

For a period of sixty days from this date, permission is hereby given to all railroad companies engaged in the transportation of freight between points in this state to transport, or to participate in the transportation of, shipments of freight between competitive points by other than the most direct route, at the rate lawfully applying *via* the shortest and cheapest route, without change of rates lawfully established to or from intermediate points.

This temporary order is made to permit the prompt movement of fertilizer and other commodities that it may be desirable to move by other than the most direct routes, and to permit the routing of all freight by the most practical route at the lowest legal rate, pending issue and consideration of general tariffs covering such movements.

It is the purpose of the Commission to permit departures from the general principle of § 1107, on account of indirect routing, only with respect to such routes as are reasonably competitive routes; and notice is hereby given to all railroad companies that desire relief from the said section beyond the date herein specified to make specific application covering routes by which they expect to handle traffic in competition with more direct routes.

Attention is again called to rule number 29, of the rules of the Corporation Commission governing transportation of freight, as follows:

“When a shipment is offered at a point where there are two routes over connecting lines to destination, it shall be the duty of the railroad company making shipment to forward same by the shortest route, unless the rate charged over the longer route does not exceed that of the shorter, or unless otherwise ordered by the shipper.”

E. L. Travis, Chairman.

OKLAHOMA CORPORATION COMMISSION.

A. L. BURNETT ET AL., CUSHING,

v.

CUSHING TELEPHONE COMPANY AND PIONEER
TELEPHONE & TELEGRAPH COMPANY.

[Order No. 898; Cause No. 2131.]

Service — Adequacy — Slowness of central office.

A telephone company was ordered to improve local exchange operating conditions, to take care of increased business, it appearing from inspection that the time consumed in getting the operator to answer calls averaged 12 seconds per call on 10 calls, and 34 seconds per call on 21 calls.

[February 11, 1915.]

COMPLAINT as to telephone exchange service; improvement ordered.

OPINION AND ORDER.

By the **Commission**: This complaint was filed by the citizens of Cushing against the Cushing Telephone Company of Cushing and the Pioneer Telephone & Telegraph Company of Oklahoma, asking that these companies be required to give adequate exchange and toll telephone service to the citizens of Cushing at all times, stating, further, that the telephone business had increased 500 per cent within the last eighteen months, and that these companies have not made the necessary arrangements to take care of the said increase in business.

The Commission has received numerous letters complaining of the local and toll telephone service at Cushing.

The Commission's telephone engineer inspected this property in March and again in July, 1914. He reported very poor service. In March he reported that the time consumed in getting the operator to answer was an average of 12 seconds per call on 10 calls. In the July report he reports an average of 34 seconds per call on 21 calls.

The evidence introduced at the hearing showed that the service at the time of the hearing was as bad, if not worse than, at the time of the inspection by the Commission's engineer.

There can be no valid excuse offered for the existing conditions in Cushing. There has been considerable complaint about the long-distance service, but as the local conditions are so bad, it is hard to say as to whether or not, under efficient operation and supervision, the toll facilities would not be sufficient to take care of the same.

It is therefore ordered that the Cushing Telephone Company give adequate service at all times, and if, after improving the local operating conditions, the present toll lines are not adequate to take care of the toll traffic, the Pioneer Telephone & Telegraph Company shall install additional toll lines in order that the people of Cushing may have adequate telephone service.

This order shall be in full force and effect on and after February 21st, 1915.

Corporation Commission of Oklahoma, J. E. Love, Chairman, A. P. Watson, Commissioner.

OKLAHOMA CORPORATION COMMISSION.

IN RE CUSHING TELEPHONE COMPANY.

[Order No. 900. Cause No. 2237.]

Return — Inadequacy.

A telephone company was authorized to increase its rates, where it appeared that its net income would yield only 4.6 per cent interest on the investment, without an allowance for depreciation.

Return — High operating expenses — Development of oil country.

A telephone company was allowed to increase its rates in spite of the fact that its operating expenses were unusually high, where it was shown that this was largely due to conditions incident to the development of an oil country.

[February 11, 1915.]

APPLICATION to increase rates; granted.

OPINION AND ORDER.

By the Commission: Application was made to the Corporation Commission by W. W. Oder, President and General Manager of the Cushing Telephone Company, and eighty-five citizens and subscribers of the Cushing Telephone Exchange, for an in-

crease in telephone rates at Cushing. They ask that the rates be increased 50 cents per month on each telephone, or that the rate on residence telephones be increased from \$1 to \$1.50 per month, and that the rate on business telephones be increased from \$2 to \$2.50 per month.

The Annual Report of the Cushing Telephone Company to the Corporation Commission showed that it had, on June 30th, 1914, \$35,768.28 invested in telephone plant and equipment. On December 1st, 1913, the telephone engineer of the Commission made an appraisal of the property, and found the replacement value to be \$34,547.87. The monthly reports of revenues and expenses on file with the Commission show the net income for the months of July, August, September, and October, 1914, to be \$554.82. Estimating that the business for the following eight months will be in proportion to the four months shown, the net income for the fiscal year 1915 will amount to \$1,664.46. This amounts to 4.6 per cent interest on the investment of \$35,768.28, without allowing anything for depreciation.

The monthly reports of the company to the Commission show unusually high operating expenses on account of the high price paid for labor in Cushing. The Commission in June, 1914, sent its engineer to Cushing to investigate conditions. He found that a good share of the operating expenses, including hire of employees, was due to the conditions surrounding the development of an oil country, living expenses and salaries being higher than they are under ordinary conditions elsewhere.

The citizens of Cushing complained of the inadequacy of the service (Cause No. 2131), and the Cushing Telephone Company answered that its income was insufficient to enable it to give adequate service.

The Commission issued its Order No. 898, requiring efficient and adequate service at Cushing. The Commission will always insist upon efficient service. It is only fair that a reasonable return be allowed on the value of the property that is used and useful in giving adequate telephone service to the citizens of Cushing. Inasmuch as the reports of the Cushing Telephone Company show that it is making only 4.6 per cent interest on its investment, and that it has no allowance for depreciation,

the Commission finds that the increase asked for should be allowed.

It is therefore ordered that the application for the increase of rates be allowed, and that the Cushing Telephone Company charge the following rates per month in the city of Cushing:

"Special line business telephones \$2.50 per month; Two-party line business telephones \$2.25 per month; Special line residence telephones \$1.50 per month; Two-party line residence telephones \$1.25 per month; More than two-party line residence telephones \$1.00 per month."

This order shall be in full force and effect on and after March 1st, 1915.

Corporation Commission, A. P. Watson, Commissioner.

VERMONT PUBLIC SERVICE COMMISSION.

SELECTMEN OF ST. JOHNSBURY

v.

BOSTON & MAINE RAILROAD.

[No. 320.]

Grade crossings — Elimination of — Financial condition of railroad — Safety devices.

The elimination of certain grade crossings was postponed because of the financial condition of the railroad company, and the company was ordered to install "automatic flagman" or automatic crossing signals at the crossings in question, for the immediate protection of travel.

[January 21, 1915.]

PETITION for elimination of grade crossings; automatic signals required until further order.

Appearances: J. Rolph Searles for petitioners; Thornton Alexander and Harry Blodgett for respondent; N. A. Norton, State's Attorney, Caledonia county, for State of Vermont; Landowners; C. J. Berry, Administrator of Estate of L. B. Stiles; G. O. Eastman for B. A. Farnum; Frank I. Brewer *per se*; A. E. Corliss for H. L. Ayer; certain other landowners not represented.

INTERLOCUTORY ORDER.

By the **Commission**: This is a petition by the selectmen of St. Johnsbury against the Boston & Maine Railroad *et al*, complaining that the crossings known as "Bacon's crossing" and "Bowker's crossing," on the line of the Passumpsic Division of said railroad, near Centerville, are among the most dangerous on the line of said railroad, and praying for the elimination of the same.

At the hearing it was represented and shown by the Boston & Maine Railroad that because of the financial condition of said corporation, and the pending plans for the reorganization of said corporation, it would be an excessive financial burden to undertake to eliminate these crossings at the present time. This was not controverted or questioned by the petitioners.

The Commission is of the opinion that these crossings are dangerous and should be at sometime eliminated, but, in view of the financial situation of the Boston & Maine Railroad as above indicated, we believe that the work of elimination should be postponed until said company is in better financial circumstances. Consequently the Commission will hold this case subject to further bearing, to be called by the Commission on notice to all parties, and further order.

It is agreed by all parties that the Commission, under the present petition, might consider and order a method for the immediate protection of travel over said crossings pending the final elimination of the same. Upon consideration of the question of immediate and temporary protection of travel over said crossings, we conclude that this can be best effected by the installation of automatic crossing signals at each of said crossings, and—

It is ordered that the Boston & Maine Railroad shall, within sixty days from the date of this order, install proper and suitable "automatic flagman" or proper and suitable automatic crossing signals at said Bacon's crossing and at said Bowker's crossing, near Centerville, in the town of St. Johnsbury, and shall maintain the same at said crossings until further order of this Commission.

Robert C. Bacon, Wm. R. Warner, Public Service Commission of Vermont.

CALIFORNIA RAILROAD COMMISSION.

IN RE OAKLAND, ANTIOCH, & EASTERN RAILWAY
COMPANY.

[Application No. 1492; Decision No. 2094.]

Security issues — Illegal issues — Power to validate.

The Commission has no power to validate notes illegally given by a railroad company, but can authorize a new note to take the place of one improperly issued.

Security issues — Promissory notes — Purchase of real estate.

A railroad company was authorized to issue two promissory notes aggregating \$58,000, bearing interest at 6 per cent per annum, and to mortgage certain real estate as security therefor, the notes to be substituted for notes of a like amount theretofore issued without authority in part payment for real estate for its terminals.

[January 20, 1915.]

APPLICATION for authority to issue notes; granted.

Appearances: Jesse H. Steinhart for applicant; Wallace M. Alexander in person; and Louis Rosenthal in person.

REPORT OF THE COMMISSION.

Gordon, Commissioner: This is an application by Oakland, Antioch, & Eastern Railway to issue two notes: One note dated January 29, 1913, in favor of Sebastiane and Edward Cecchetti, due January 29, 1916, for \$23,000; one note dated January 14, 1913, in favor of Louis Caffaro, due January 14, 1916, for \$35,000.

It is stated by the applicant that these notes were issued on the dates specified; that the applicant had not realized that said issue was in violation of the public utilities act until the matter was called to its attention by a representative of this Commission.

The applicant states that the note for the sum of \$23,000 was issued January 29, 1913, to Sebastiane and Edward Cecchetti in part payment for a parcel of real estate at Second and "M" streets in Sacramento, which it now uses for a freight terminal. The full price was \$59,000, of which \$36,000 was paid in cash and a note for three years at 6 per cent per annum given for

the balance. The note is secured by mortgage on the parcel of real estate.

The note for the sum of \$35,000 was issued on January 14, 1915, to Louis Caffaro in part payment for a parcel of real estate on Third and "I" streets in the city of Sacramento, purchased by the applicant for a passenger terminal, to which use it is now devoted. The cost of this property was \$60,000, of which \$25,000 was paid in cash and a note given for the balance for three years, with interest at 6 per cent per annum. The note is secured by a mortgage on the real estate purchased.

This appears to have been a transaction in entire good faith, and while the Commission has no power to validate notes illegally given, it can authorize a new note to take the place of one improperly issued. Obviously, this railway should take proper steps to remove all question of doubt as to proceedings involving its terminals. I therefore recommend that the application be granted, and submit the following form of order:

ORDER.

Oakland, Antioch, & Eastern Railway having applied to this Commission for authority to issue two notes, as set forth in the above opinion, and a hearing having been held, and it appearing that the purposes for which said notes are to be issued are not in whole or in part reasonably chargeable to operating expenses or income,

It is hereby ordered that Oakland, Antioch, & Eastern Railway be given authority, and it is hereby given authority, to issue two notes as follows: One note to Sebastiane and Edward Cecchetti in the sum of \$23,000; one note to Louis Caffaro in the sum of \$35,000.

It is further ordered that the applicant be granted authority, and is hereby granted authority, to mortgage the certain parcel of real estate in the city of Sacramento at Second and "M" streets now used as its freight terminal, as security for said note to Sebastiane and Edward Cecchetti in the sum of \$23,000.

It is further ordered that the applicant be granted authority, and is hereby granted authority, to mortgage a certain parcel of real estate in the city of Sacramento at Third and "I" streets,

now used as its passenger terminal, as security for the note herein authorized to be issued to Louis Caffaro in the sum of \$35,000.

The authority herein granted is granted upon the following conditions, and not otherwise:

(1) The notes herein authorized to be issued shall be used to take up and repledge notes heretofore issued without the authority of this Commission, as follows: One note dated January 29, 1913, in favor of Sebastiane and Edward Cecchetti, due January 29, 1916, for \$23,000; one note dated January 14, 1913, in favor of Louis Caffaro, due January 14, 1916, for \$35,000.

(2) The notes herein authorized to be issued shall bear date of January, 1915, and shall be made payable in January, 1916, and shall bear interest at a rate not to exceed 6 per cent per annum.

(3) The applicant herein shall report to this Commission within thirty days after the notes herein authorized to be issued shall have been issued, stating the terms and conditions of such issue.

(4) The authority herein given is conditioned upon the payment by the applicant of the fee prescribed in the public utilities act.

(5) The authority herein given to issue notes shall apply to such notes as shall have been issued on or before June 30, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

CALIFORNIA RAILROAD COMMISSION.

IN RE APPLICATION OF NORTH MONETA GARDEN LANDS WATER COMPANY.

[Application No. 1283; Decision No. 2112.]

Public utilities — Company supplying water for irrigation and domestic use.

A corporation authorized to carry on the business of a water company in all its branches for the supplying of certain lands and the occupants thereof with water for domestic uses or both is not a mutual water company, but a public utility, where only a portion of its stock is made appurtenant to the land, and the control of the company is vested in outside parties.

Commission — Jurisdiction — Water and irrigation company.

The Commission's jurisdiction over public utilities extends to a corporation authorized to carry on the business of a water company in all its branches for the supplying of certain lands and the occupants thereof with water for domestic uses or both, where only a portion of its stock is made appurtenant to the land, and the control of the company is vested in outside parties.

Depreciation — Annual allowance — Unused property.

The owners of fifty lots out of four hundred eighty for which a water system is constructed to supply cannot be called upon to pay the full amount which would ordinarily be allowed for depreciation if the system were fully utilized.

Water rates — Increase — Company not making expenses.

A flat rate for domestic use of water was ordered to be increased from \$1 to \$1.50 per month, where it appeared that the company was not making operating expenses.

Contributed property — Voluntary payments to increase revenue — Commission authority.

The authority of the Commission is unnecessary to enable a water and irrigation company to receive voluntary payments from the owners of unimproved lands to add to its revenue.

[January 29, 1915.]

APPLICATION for authority to increase rates; granted in part.

Appearances: Ingall W. Bull for applicant; Charles M. Ackerman for consumers.

REPORT OF THE COMMISSION.

Thelen, Commissioner: This is an application for an order authorizing an increase in the rates for water delivered for both domestic and irrigation uses.

The petition alleges in effect that North Moneta Garden Lands Water Company, hereinafter referred to as the water company, is a corporation engaged in supplying water for domestic and irrigation purposes to persons residing in section 15, township 3 south, range 14 west, S. B. B. and M.; that about fifty homes are located on the property served by petitioner; that the present rate for domestic water is a flat rate of \$1 per month; that the present rate for water for irrigation purposes is 20 cents per hour through a 2-inch standpipe attached to a 4-inch lateral; that said rates are not sufficient to pay the expenses of maintenance and operation, interest on the investment and depreciation; that in order to meet these expenses it will be necessary to increase the rate for domestic water from \$1 to \$2.50 per month, flat

rate, and the rate for irrigation purposes from 20 cents to 50 cents per hour through a 2-inch standpipe attached to a 4-inch lateral; that in addition to these rates petitioner desires to collect \$1 per month from each acre lot to which petitioner's mains are connected and on which water is not actually being used; that a mortgage on petitioner's entire property was foreclosed on or about January 1, 1914, and that unless relief is granted petitioner can no longer operate its water system; and that petitioner wishes to install meters when desired by petitioner or its patrons, and to charge a rate of 10 cents per 100 cubic feet of water supplied through the meters so installed. Petitioner asks that this Commission make its order authorizing petitioner to increase its rates for water to \$2.50 per month, flat rate, for domestic water through a $\frac{3}{4}$ -inch pipe attached by a reducer to a 4-inch main, 50 cents per hour for water supplied for irrigation purposes through a 2-inch standpipe connected with a 4-inch lateral and 10 cents per 100 cubic feet for water sold for irrigation purposes through a meter. Petitioner also asks that it be authorized to charge a flat rate of \$1 per month for each acre lot to which its mains are connected, on which lots no water is actually being used.

A public hearing on this application was held in Los Angeles on January 19, 1915.

The evidence shows that petitioner is the owner of a water system consisting of one well, one 75 horse-power motor, one centrifugal turbine pump, $\frac{1}{2}$ mile 14-inch mains, 1 mile 12-inch mains, 6 miles 4-inch laterals, one 50,000 gallon tank, one 40,000 gallon tank, one 10,000 gallon tank, and some 5 acres of land on which the well is located, all situated in section 15, township 3 south, range 14 west, S. B. B. and M., in Los Angeles county, near Inglewood, adjoining Hawthorne on the south. The water system was installed primarily for the purpose of aiding in the sale of lands owned by its incorporators in said section 15. These lands were subdivided into lots containing about 1 acre each, and petitioner's mains were laid to each lot. A 2-inch standpipe was attached to the lateral in the rear of each lot, for irrigation purposes, but the $\frac{3}{4}$ -inch standpipes for domestic service are installed only as needed. The evidence shows that out of some 480 lots

only 50 have been built upon and use water for either domestic or irrigation purposes.

A number of consumers from this water system appeared at the hearing and protested against any action by this Commission, on the ground that petitioner is strictly a mutual water company and that this Commission has no jurisdiction over it. Attention must first be directed to this point.

Petitioner was incorporated under the laws of this state on February 11, 1904. The articles give the corporation power, among others, "to carry on the business of a water company, in all its branches, for the supplying of any lands in said section fifteen (section 15, township 3 south, range 14 west, S. B. B. and M.), and the occupants thereof, with water for irrigation or domestic uses or both." The articles do not state that the company is to be a mutual water company, or that water is to be delivered only to stockholders. The company is authorized to issue 1,400 shares of capital stock of the par value of \$25 each.

The company's by-laws provide that if stock is issued appurtenant to land, one share of stock shall be issued for each acre, and that the certificate of stock shall, on its face, show the lot or lots to which the water is made appurtenant. There is no provision, however, that all stock issued must be made appurtenant to land. Even if one share of stock should eventually be issued for each acre of land in this section, the total shares so issued would not exceed 640, whereas the company was incorporated for 1,400 shares, and has issued its entire authorized stock. Thus the control of the company may at all times be vested in outside parties, as has actually been the case continuously since its incorporation. Petitioner's records show that not to exceed $266\frac{1}{2}$ shares have been issued to landowners in this section, and that the remaining $1,133\frac{1}{2}$ shares have been issued to Berlin Realty Company, the land company, and are now held by the Los Angeles Trust & Savings Bank as collateral security. These conditions are inconsistent with the existence of a mutual water company.

The question whether petitioner is a public utility or a mutual water company is of importance in several aspects. In January, 1913, the water company purported to mortgage all its property to the Berlin Realty Company, the owner of a majority of its capital stock, as security for the payment of a promissory note

for moneys advanced. The note was not paid, and the Berlin Realty Company thereafter secured a foreclosure of this purported mortgage.

If petitioner is a mutual water company, all its consumers may now find themselves in the position of having been sold out by the majority stockholder. On the other hand, if petitioner is a public utility, the mortgage and all proceedings thereunder are absolutely void, for the reason that petitioner did not secure this Commission's authority to mortgage its property as provided in § 51 of the public utilities act.

Again, if petitioner is a mutual water company, the land company, owning the major portion of the capital stock, can levy assessments *ad libitum*, and the minority stockholders can secure no help from this Commission. Nor can the Commission assist them if petitioner fails to render good service.

Section 2 of chapter 80 of the Laws of 1913 contains the most recent definition by the legislature of California of a mutual water company. The section reads as follows: "Whenever any private corporation or association is organized for the purpose solely of delivering water to its stockholders or members, at cost, and delivers water to no one except its stockholders or members at cost, such private corporation or association is not a public utility, and is not subject to the jurisdiction, control, or regulation of the Railroad Commission of the State of California."

Petitioner does not come within this definition. On the evidence as introduced in this proceeding, I find that petitioner is a public utility subject to the jurisdiction of the Railroad Commission.

While compelled to make this finding, I am convinced that the most satisfactory method of handling the water problem of this section would be the ownership and operation of the system by the landowners themselves. In my opinion, the land company should turn over the system to the people for a small consideration, and the system should thereafter be owned and operated by those who are directly interested therein, either as a mutual company or an irrigation district.

I shall now address myself to the request for an increase in rates.

Petitioner gives its revenue for 1914 as follows:

TABLE I.
Revenue for 1914.

Domestic	\$1,011.11
Irrigation	236.20
Connections	4.50
Total	<u>\$1,251.81</u>

Of this revenue, \$204.25 was paid by the owners of a tract of land known as Central Acres. The use of water by this tract will soon be discontinued. The revenue for the year 1914, after subtracting the sums paid by the owners of the Central Acres tract, amounted to \$1,047.56.

Petitioner waives all interest on its investment, and asks only rates sufficient to pay operating and maintenance expenses and depreciation. The operating and maintenance expenses for 1914, as claimed by petitioner, are as follows:

TABLE II.
Operating and Maintenance Expenses for 1914.
(As claimed by petitioner.)

Materials and supplies	\$160.93
General repairs	22.40
General expenses	40.51
Telephone	28.00
Taxes	60.18
Power and salaries	1,313.65
Bad debts	12.04
Total	<u>\$1,637.71</u>

An analysis of these costs shows that the item "materials and supplies," and \$5.50 of the item, "general expenses," are properly chargeable to capital account, and not to operating expenses. The item "power" and "salaries" consists of the salary of the engineer who operates the plant and the cost of electric energy used by the pump. In 1914, petitioner paid its engineer \$70 per month during the first seven months and \$40 per month during the last five months. The present engineer receives rent free, and has certain perquisites such as the right to cut hay. I consider \$50 per month a reasonable allowance to be made for the engineer's salary.

Petitioner's statement, as corrected, shows a total of \$1,398.09 properly chargeable for operation and maintenance. It thus appears that the revenue secured in 1914, barring the revenue from the Central Acres, fell \$350.43 short of paying even operating and maintenance expenses, with no allowance for interest on the investment or depreciation.

Petitioner also claims an allowance for depreciation. Mr. H. F. Clark, one of this Commission's assistant hydraulic engineers, estimated that it would cost \$23,000 to reproduce new this system, except the real estate, and that the depreciation would amount to about 5 per cent per annum on the sinking fund basis on the items which depreciate. As already pointed out, only 50 lots out of a total of at least 480 lots for which this system was constructed have as yet been built upon. It is elemental that in the beginning of a water utility's operations the rates frequently cannot be made high enough to pay the normal allowance for depreciation. If an attempt were made to charge the first few consumer's rates high enough to cover this charge, they could not afford to take water or to settle on the land. Of course, in the long run, the utility must receive an adequate allowance for depreciation, if fair judgment was used in the construction of the system. The present consumers of applicant's system cannot reasonably be called upon to pay the amount for depreciation which will be paid by the consumers when the system is more fully utilized.

I find on the evidence in this proceeding that the rate for domestic water should be increased from \$1 to \$1.50 per month, flat rate, but that it would be unjust to the present consumers to make any further increase in this rate.

No order will be made at the present time with reference to the rate for irrigation or the rate for metered water, for the reason that the evidence is insufficient to justify an order. If petitioner will present additional data showing how much water flows per hour through the 2-inch irrigation standpipes and full data with reference to the water intended to be metered, the Commission will make such supplemental order as may seem proper in the premises.

The Commission has no jurisdiction to compel the owners of lots in this section to pay for water which they do not use. Petitioner's counsel frankly concedes this point, but asks authority for his company to receive payment from owners of unimproved lots, if the latter desire voluntarily to make such payments to add to petitioner's revenue. This Commission's order, however, is not necessary to enable kindly disposed individuals to make gifts

to public utilities, and no order under this head need issue in this proceeding.

I submit the following form of order:

ORDER.

North Moneta Garden Lands Water Company having applied for an order of the Railroad Commission authorizing the company to increase its rates for water supplied for irrigation and domestic purposes, as set forth in the petition herein, and a public hearing having been held upon said application, and the Railroad Commission finding that petitioner is a public utility and that the rates herein established are just and reasonable rates,

It is hereby ordered that North Moneta Garden Lands Water Company be and the same is hereby authorized, effective March 1, 1915, to charge for domestic water through a $\frac{3}{4}$ -inch pipe attached by a reducer to a 4-inch main, the flat rate of \$1.50 per month.

It is further ordered that North Moneta Garden Lands Water Company may present further evidence to the Railroad Commission in the matter of the rate for irrigation and for metered service, as indicated in the opinion herein.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

WISCONSIN RAILROAD COMMISSION.

IN RE RHINELANDER POWER COMPANY.

Public utility — What constitutes — Public and private use.

A corporation which, among other things, is authorized by charter to manufacture electric power and to convey it where it may be desired for use, and which uses the public streets of a municipality by virtue of a franchise, is a public utility, although by far the greater part of its product goes to a purely private concern.

Rates — Discrimination — Contract prior to utility law.

A contract by which an electric utility agrees to supply a customer with a large portion of its product at excessively low rates will not be declared void on the theory that such rates are discriminatory as against other customers who must pay higher rates in order to insure a reasonable return, where the contract was entered into prior to April 1, 1907.

Contracts — Validity — Public policy — Unreasonable rates.

A rate contract entered into between a public utility and one of its customers does not violate public policy so as to render it void from the beginning, merely because the rates established thereby are unreasonably low.

Rates — Cost of product — Efficiency.

A Commission can determine in a satisfactory manner whether rates are unreasonably low only by ascertaining what it should cost the utility to produce its commodity under reasonably efficient operation.

Valuation — Hypothetical steam plant.

An investment of \$86.60 per kw. of station capacity for a steam Turbo-Generator plant is not excessive.

Depreciation — Hydraulic-power plant.

Annual depreciation on a hydraulic-power plant was computed by the Commission at 2.5 per cent for the purpose of comparing operating expenses of such a plant with those of a hypothetical steam plant in order to calculate the saving due to the operation of the water plant.

Depreciation — Steam-power plant — Straight line basis.

The annual rate of depreciation of steam stations with extensive distribution systems is often 4.5 per cent, computed on the straight-line basis.

Depreciation — Steam-power plant — Sinking-fund basis.

An annual allowance of 3 per cent on the sinking-fund basis should be a sufficient charge to the depreciation account for a well-built steam power plant.

Water rights — Saving — Comparison of water and steam plants — Auxiliary plant.

In order to arrive at a condition under which the service rendered by a hydraulic-power plant furnishing its product subject to the vicissitudes of the water supply would be equal to that which a hypothetical steam plant operating continuously could furnish, it is necessary to assume a situation in which the former would be assisted by an auxiliary plant of some kind.

Valuation — Water power — Comparative steam plant.

The sum of \$80,000 was held to be about the maximum value fairly allowable for water-power rights, where it appeared that the theoretical saving over the cost of producing the supply by a steam plant would be only \$8,000 per year, if the water plant had been equipped with an auxiliary steam plant necessary to produce a continuous supply of power, and where it also appeared that the theoretical estimates presupposed the ability of the company to dispose of a large quantity of power, and the evidence did not demonstrate the marketability of the power under those conditions.

Rates — Reasonableness — Limited market.

The establishment of a schedule of public service rates sufficient to yield a reasonable return on the investment, regardless of the marketability of the supply, is a delicate and difficult task, and should be limited by a reasonable maximum based upon the facts of the particular case.

Rates — Power of Commission — Effect of contract..

The Commission has power to order a public service corporation to establish a schedule of reasonable rates, although it has previously made valid contracts with consumers for lower rates.

Constitutional law — Contract obligations — Impairment.

Contract obligations are not impaired, within the inhibition of the Constitution, by the act of the Commission raising the rates of a public service corporation established by a valid contract with its customers, since the power to alter the charges so established is implied in the contract itself.

Rates — Public policy — Unreasonably low charges.

Considerations of public policy require that a power company be permitted to raise its rates when it appears from an examination of its business that the return from existing rates is so low as to threaten or endanger the very existence of the enterprise.

Rates — Increase — Maximum schedule.

A power company which showed that its gross income was only 5.3 per cent on the cost new and 2.8 per cent on the value of the physical property plus an allowance for water-power rights, working capital, and going value, but which did not demonstrate the marketability of its product at higher rates, was authorized, through negotiations with its customers, to make a new schedule of charges not to exceed a maximum specified by the Commission.

[January 30, 1915.]

APPLICATION for authority to advance electric power rates; granted.

The appearances are set out in the opinion.

By the **Commission**: This is an application by a company owning a water power on the Wisconsin river near Rhinelander, used chiefly for the production of electricity, for authority to advance its rates. In the formal petition it is stated that the company has heretofore filed with the Commission its schedule of rates and charges for electric current generated by it, and that such schedule of rates includes the rates set forth in three certain contracts, and also the rates charged for current sold by the petitioner, and not covered by the said contracts.

The petition sets forth at some length the terms of the contracts in force under which the petitioner company disposes of the greater part of its product. From the Rhinelander Paper Company, under one contract, it receives \$12 per horse power per year; under a contract made with E. A. Edmonds, which was transferred later to the Rhinelander Paper Company, it receives for additional current \$15 per horse power per year,

while for a less amount furnished to the Rhinelander Lighting Company it receives \$15 per horse power for the first 28 horse power, and \$20 per horse power for an additional 50 horse power.

The total capacity of the plant is given at 1,600 horse power, or, reduced to electrical terms, about 1,200 kilowatts. Under the contracts referred to above, then, the petitioner obligated itself a number of years ago to sell to the Rhinelander Paper Company 500 horse power, or 374 kilowatts; to E. A. Edmonds under certain conditions, available amounts up to one third of the capacity of the plant operated at full rated capacity, and in any event all available power up to 500 horse power, or 374 kilowatts; and to the Rhinelander Lighting Company, 310 horse power or about 231½ kilowatts. It thus appears that the petitioner contracted, for long terms, to dispose of an aggregate of 1,310 horse power out of its rated capacity of 1,600 horse power, leaving available for sale to other customers about 290 horse power or about 216 kilowatts. These contracts have each about ten years to run.

The petition further recites that during the year 1913 the petitioner's plant generated and transmitted approximately 5,000,000 kilowatt hours; that of this amount approximately 700,000 kw. hrs. was consumed by the lighting and power customers of the Rhinelander Lighting Company, and about 4,300,000 kw. hrs. by the Rhinelander Paper Company. The petitioner received for this current sold during the year 1913, \$14,100. The petitioner alleges also that the value of the property used and useful in the business of generating and selling the above amount of electricity exceeds the sum of \$110,000. Also, that the annual income needed to meet proper operating expenses of the plant, including maintenance and repairs, make adequate provision for depreciation, provide for the payment of taxes and interest upon its bonded and other indebtedness, and secure a reasonable return upon the fair value of the property used in the business, is at least \$25,000; and that even this sum would not provide for additions and betterments of which the plant now stands in need.

It is further alleged in the petition that unless the petitioner is enabled to derive more income from the generating and sale

of current, it will be unable to continue to furnish adequate service to the public and its individual customers, and it will be unable to meet and perform its obligations and duties as a public utility.

The relief asked for is "that the Railroad Commission will, after giving due notice thereof, proceed to investigate the matters and things in this petition contained, and fix a schedule of rates and charges which it may authorize your petitioner to put into force and effect for the furnishing by it of electric current at and in the vicinity of Rhinelander."

After due notice a hearing was held in the office of the Railroad Commission at Madison on September 21, 1914. Edwin S. Mack and James B. Blake appeared for the petitioner; no one appeared in opposition.

At the hearing the time was taken up mainly by three witnesses, all of whose testimony had reference to the character and equipment of the plant of the petitioner company, and the cost of producing and disposing of the current, and all tending to prove that the contracts for the product, now in force, and which take by far the larger part of the current generated, are bringing the petitioner returns inadequate even to pay the cost of operation and the maintenance of the plant at a proper standard of efficiency, to say nothing of paying the fixed charges, such as interest, depreciation, taxes, etc. The witnesses, Professor H. J. Thorkelson, C. A. Wixson, and E. A. Forbes, were examined at length, the first as to the mechanical efficiency and the cost of producing, and the latter two as to the business management, the nature of the contracts in force, and the outlook for getting additional business for the plant. The testimony also went to show that the power company was organized as a public utility, it being understood by its first contract patrons that the company would sell current up to its capacity to any customer, and its letterheads from the beginning so advertising.

The arguments in the brief submitted by the petitioner's attorneys cover two points, one being the question of jurisdiction, the other that of the validity of the contracts under which the petitioner company disposes of a large part of its product. As to the first, the law under which the Railroad Commission acts is very explicit in specifying what shall be considered public

utilities. It says: "The term 'public utility' as used in this act shall mean and embrace every corporation, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, and every town, village, or city that now or hereafter may own, operate, manage, or control any plant or equipment or any part of a plant or equipment within the state, for the conveyance of telephone messages or for the production, transmission, delivery, or furnishing of heat, light, water, or power, either directly or indirectly, to or for the public, or that now or hereafter may own, operate, manage, or control any toll bridge wholly within the state." Laws 1907, chap. 449; Laws 1911, chap. 48. In *Strickley v. Highland Boy Gold Min. Co.* 200 U. S. 527, 50 L. ed. 581, 26 Sup. Ct. Rep. 301, 4 Ann. Cas. 1174, and *Clark v. Nash*, 198 U. S. 361, 49 L. ed. 1085, 25 Sup. Ct. Rep. 676, 4 Ann. Cas. 1171, the United States Supreme Court gives clear recognition to the right of a state to declare by legislative enactment, in matters pertaining to its own peculiar conditions, what constitutes a "public use."

So far as the present status of the Rhinelander Power Company is concerned, therefore, the law, as the courts have upheld it, clearly settles it. The company operates a plant for the production, transmission, and delivery or furnishing of power, both directly and indirectly, to the public.

But we are here dealing with a situation existing prior to the enactment of the Wisconsin utilities law in 1907.

Was the Rhinelander Power Company a public utility when the contracts now in existence and having approximately ten years yet to run—the contracts with the Rhinelander Paper Company and with E. A. Edmonds, and with the Rhinelander Lighting Company—were entered into almost ten years ago?

If we had to consider only the last-named contract there would be no question as to either the past or the present status of the petitioner company. The question that does arise grows out of the fact that by far the larger part of the product of the petitioner goes to a purely private concern.

The weight of judicial decision is apparently on the side of the proposition that the petitioner was and is a public utility, and yet there are some cases pointedly against that conclusion.

In an early Wisconsin case, *Atty. Gen. v. Eau Claire*, 37 Wis. 435, the city of Eau Claire had been authorized by the legislature to build a dam across the Chippewa river, to construct waterworks, to construct sewers, etc. The city voted to issue bonds to carry out the purposes named, and the attorney general asked for an injunction to restrain the city from levying taxes to meet the bond issue on the ground that, it being the declared purpose of the city to lease some of the power from the dam for private purposes, the proposed tax levy was not for a "public use." A number of points were covered by the opinion handed down by Chief Justice Ryan, but the following touched the principles involved in the present case:

"The dam so authorized might well produce an excess of power. . . . In such case . . . the surplus water need not run to waste. The legislature might well grant and the city take power to lease it. The power to construct and maintain the dam would still rest on the public municipal use; not on the disposition of the accidental excess."

"The maintenance of a dam for the purpose of leasing the water to private persons for private use is not a municipal or public purpose for which a municipal corporation can be authorized to exercise the power of borrowing money and levying taxes."

In other words, the court held that if the dam were to be built to operate waterworks, the fact that some surplus power were leased to private persons for private use would not destroy its public-use character, but that if the paramount purpose was to lease power to private persons for private use it could not be considered a "public use."

Another case bearing some resemblance to the one before us is a Maine case, *Brown v. Gerald*, 100 Me. 351, 70 L.R.A. 472, 109 Am. St. Rep. 526, 61 Atl. 785. A corporation was duly chartered to build a dam and install a plant for the manufacture of electricity. It was empowered specifically to transmit electric power for lease or sale within certain towns "in such manner as may be expedient," and subject to the general laws to erect poles and string wires for that purpose. After the plant was completed, the company contracted to deliver to a paper mill several miles away all of its product of electricity, though

by a supplemental agreement it reserved the right to take from the wires sufficient current to enable it to perform its duties in the towns as a public lighting company. The proposed transmission line designed to deliver the current to the contracting manufacturing concern was 6 miles long. It did not follow the highway, but by right of eminent domain property was taken across twelve farms. Injunction was asked for by one of the farmers on the ground that the electrical company proposed to take the land for a private, rather than a public, use. The court held, among other things, that "under the circumstances of this case whatever may have been the purposes of the corporation elsewhere, the court finds that the land of the plaintiff was actually taken for the transmission of an electric current generated by the defendant corporation, and sold by it to another for manufacturing or power purposes, and not for electric lighting or other purposes." Substantially the court held here that the defendant corporation lacked one of the essential conditions of a public-service enterprise; namely, the right of the public, or so much of it as has occasion, to be served as a matter of right, and not of grace.

A comparatively recent Minnesota case is the Minnesota Canal & Power Co. v. Koochiching Co. 97 Minn. 429, 5 L.R.A. (N.S.) 638, 107 N. W. 405, 7 Ann. Cas. 1182, decided in 1906, prior to the enactment of the public utilities law in this state. In this case an order was made in the trial court dismissing a petition in condemnation proceedings in which the petitioner sought to take private property to create a water power, construct and maintain a water power plant, supply water power direct from the wheels to other concerns, generate and distribute electricity for heat, light, and power purposes, and further to construct and maintain canals and waterways on which to operate barges and be otherwise used for navigation purposes.

The court held that the creation of a water power and water-power plant for the purpose of "supplying water power from the wheels thereof to the public was a private enterprise in aid of which the power of eminent domain could not be exercised."

It was said, further, by the court "that the generation of electricity by water power for distribution and sale to the general

public on equal terms, subject to governmental control, is a public enterprise, and property so used is devoted to 'public use.' "

Also, "that when the purposes stated in the petition are part public and part private the right to proceed (that is to exercise power of eminent domain) must be denied."

Also, "that a use is not public unless under proper regulations the public has the right to resort to the property for the use for which it was acquired, independently of the will or caprice of the corporation in which the title of the property vests upon condemnation."

In the Cawker Case, 147 Wis. 320, 37 L.R.A.(N.S.) 510, 133 N. W. 157, where it was sought to bring under the jurisdiction of the Railroad Commission the executors of the Cawker estate, who were operating a lighting plant for the benefit of the tenants of a building owned by the estate, from which they supplied the surplus current to two or three adjoining buildings, in the opinion holding that the executors were not operating a utility, the court said: "It was not the furnishing of heat, light, or power to tenants, or incidentally to a few neighbors, that the legislature sought to regulate, but the furnishing of those commodities to the public; that is, to whoever might require the same. . . . The use to which the plant, equipment, or some portion thereof is put must be for the public in order to constitute it a public utility. But whether or not the use is for the public does not necessarily depend upon the number of consumers; for there may be only one, and yet the use be for the public,—as where a plant is built and operated for furnishing power to the public generally, but for a time finds one consumer who uses it all."

In 75 Vt. 235, decided in 1904, a dam owner desired to raise the height of his dam, which would cause the overflow of lands which he sought to condemn on the ground that he proposed to generate electricity to operate a railroad. The court held that his was not a "public use," because, while the railroad was obliged to serve the public, the dam power was not obliged to serve the railroad.

On the other side, and holding that a water power is in itself a public-service enterprise; and that if it generate electricity for sale to the public it is a public utility within the meaning of the Wisconsin law; and that its professed intention, rather

than the number of consumers it may have, is what determines the character of the enterprise, there are numerous cases, which bear directly upon the case in hand.

Wyman, whose work on Public Service Corporations is recognized authority, says: See. 72. "The improvement of navigable waters furnishes one of the most striking illustrations of the use of public highways in enterprises designed to promote the service of the public."

The court in a New Hampshire case decided in 1904 (*Rockingham County Light & P. Co. v. Hobbs*, 72 N. H. 531, 66 L.R.A. 581, 58 Atl. 46) says: "Where a company engaged in generating and selling electricity locates wires in the highways, and procures and attempts to exercise the right of eminent domain, it takes upon itself the obligations of a quasi public corporation, and is bound to supply electricity at reasonable rates and without discrimination to all persons so far as it has the capacity to do so; and the use of land by such corporation for constructing and maintaining a line of wires in furtherance of its business is a 'public use.'"

The Rhinelander Power Company was not only given the right in its charter to use the streets for poles and wires to transmit its electricity, but it constructed such transmission lines, and at various times used them for public lighting.

In a Maine case, *Weymouth v. Penobscot Log Driving Co.* 71 Me. 29, decided in 1880, the court says, establishing the public-service character of a water power: "In this case the charter conferred the privilege of driving not a part, not such a portion as the company might choose, but 'all' the logs to be driven. This right having been accepted by the company, it became a vested and also an exclusive right."

That is to say, applying this reasoning to the case in hand, the Rhinelander Power Company having accepted the grant of power to serve the public, the right of the public to be served by it up to the limit of its capacity was established.

Even in the Minnesota case cited above, in opposition, the court declared that the generation of electrical power for distribution and sale to the general public on equal terms is a public enterprise, and that property so used is devoted to a "public use." It denied the right of the water power company to ex-

ercise the right of eminent domain on the ground that some of its power was leased direct from the wheels, which was not a "public use." The Minnesota court elsewhere in the same case makes a distinction between "a use which is public, and an interest which is public."

In *Shasta Power Co. v. Walker*, 149 Fed. 568, a California case, the defendant attempted to prevent the plaintiff, organized with a franchise for the manufacture and distribution of electricity, from exercising the right of eminent domain, on the ground that plaintiff was a private, rather than a public, corporation. In holding for the plaintiff the court said: "The community might be large or small, or the service might be limited to a few, or extended to many; but within the compass of the proposed service every individual similarly situated should be entitled to it as of right upon like conditions; otherwise it is hardly conceivable how such an institution could be considered a public-service corporation."

In *Sammons v. Kearney Power & Irrig. Co.* 77 Neb. 580, 8 L.R.A.(N.S.) 404, 110 N. W. 308, cited in the petitioner's brief, the court holds: "A corporation formed for the purpose of supplying water or water power is a quasi public corporation."

From the articles of incorporation of the Rhinelander Power Company the business and purpose of the corporation is given as:

"The improvement of that part of the Wisconsin river between the north line of lots 4 and 7 of section 6, towns of 36 north, range 9, east, in Oneida county, Wis." and etc.; "the storing, sorting, and delivering thereon saw logs and square and round and other timber; the driving, holding, handling, sorting, and booming of logs in said part of the Wisconsin river; the acquiring by proper assignment of E. S. Shepard and A. W. Shelton of the rights and franchises granted to said Shepard and Shelton," etc., "the building of the dam therein provided for and the carrying out of the provisions of said chapter 239; the use of the hydraulic power created by said dam for manufacturing purposes; to manufacture and produce power electrically developed, and to convey such power to any place or places where it may be desired to use the same; to lease such electrically developed power, and to engage in the business of electric lighting; to produce and lease hydraulic power," etc.

From the testimony at the hearing it appears that the petitioner company holds a franchise from the city of Rhineland for the use of the city's streets whereon to erect poles and string wires for the distribution to customers of electric power.

There would seem to be no doubt, therefore, that the Rhineland Power Company was a public utility within the meaning of the law when the contracts in question were entered into, and is now a public utility, and this Commission so finds.

The second question, that of the validity of the contracts made by the petitioner for the disposal of current, is more specifically a question of law for determination by the courts, than is the first question. The petitioner company being a public utility, however, and this Commission being asked by it for permission to establish a new schedule of rates, and a change in rates necessarily involving the question of the validity of the existing contracts, whether it grant or refuse the permission asked for, the Commission should give its reasons for considering or refusing to consider the contracts void as against public policy.

The substance of the contention of the petitioner's attorneys is that the existing contracts, that with the Rhineland Paper Company, that with the E. A. Edmonds, afterward transferred to the Rhineland Paper Company, and that with the Rhineland Lighting Company, all of which contracts were entered into prior to the enactment of the public utilities law in 1907, were each and all for unreasonably low and inadequate consideration, and the petitioner company being a public utility, said contracts are void; for the reason, first, that they involve gross discrimination against other possible consumers: and, secondly, the rates in the contract being below cost of service, they are void as against public policy.

Much of the testimony given at the hearing by Mr. H. J. Thorkelson, an engineering expert, went to show that at the very beginning of the contracts the rates named in them were unreasonably low, and were never sufficient to meet the operating expenses of the plant and give a reasonable return. The testimony of the other two witnesses, Mr. Forbes and Mr. Wixson, who operate its plant for the petitioner company, confirms the statement of the engineer, that the income of the company has always been inadequate, and that the remaining current not used under

the contracts named cannot be sold at a price sufficient to bring the income up to the point of meeting the necessary operating expenses of the plant, to say nothing of paying a return upon the property used and useful in carrying on the business. It appears, indeed, that the petitioner has never been able, except for a short time to the city, to dispose of any of its current above what is used under the contracts.

Whether the plant of the petitioner was a paying concern at its inception or not, it seems reasonably clear that for several years last past, at least, it has not had an adequate income.

In the brief submitted by the petitioners, it is alleged that the contracts call for 1,310 of the total rated capacity of the plant of 1,600 horse power, so there remains unsold or not contracted for 290 horse power or 216 kilowatts. "The contracts in question," says the brief, "were a gross and therefore an unjust and illegal discrimination in favor of the parties thereto as against the interests of the public in general, and as against such particular members of the public as might thereafter become customers of the Rhinelander Power Company for any part of the available generating capacity in excess of the amount of energy disposed of under those contracts."

More to the point is the contention in the petitioner's brief that, the existing contracts being made on a price basis grossly inadequate from the beginning, were illegal, and are void as against public policy.

"Contracts," says the brief, "which would lead to such results as these contracts, and as it must have been apparent they would lead to such results at the time they were executed, are not legitimate contracts within the public utility field. It was therefore an assured fact from the inception of these contracts that performances under them would necessarily result in the ruin of the Rhinelander Power Company and in its inability to furnish service to all members of the public desiring it at reasonable cost; that its property and plant must necessarily be allowed to depreciate and run down, and that ultimately it might have to pass through a receivership, bankruptcy, or a reorganization, and that thereafter the public service to be rendered by it or its successor could be made adequate only through the investment of

additional capital, which would in turn necessarily increase the rates which the public would be obliged to pay.

" . . . Thus it would appear that in order for the Rhinelander Power Company to continue to exist and to furnish adequate service, within its generating capacity, to the public demanding it, it would be obliged to charge such customers as it might secure for its electrical energy, generated but not sold under the three contracts referred to, a substantial excess over the actual cost of the service rendered, so as to make up for the deficiency between the income derived from and the cost of service tendered to, the performance of those three contracts. The company's subsequent failure to secure additional customers, for the available 20 per cent of its generating capacity, who should continue to use its service permanently, may be accounted for by this situation.

" . . . The situation just outlined was such that, in view of it, the contracts made by the Power Company with the Paper Company, Edmonds, and the Lighting Company were illegal at their inception. There are two reasons for reaching such a conclusion. First, the contracts in question were a gross and therefore an unjust and illegal discrimination in favor of the parties thereto as against the interests of the public in general, and as against such particular members of the public as might thereafter become customers of the Rhinelander Paper Company for any part of the available generating capacity in excess of the amount of energy disposed of under those contracts. Second, the contracts were against public policy for the reason that they threatened from the outset the success of the project undertaken by Rhinelander Power Company to serve the public as a utility furnishing electric power at Rhinelander and vicinity, in that they created a condition which, from the outset, made it impossible for Rhinelander Power Company to successfully conduct its business, as that company would find it impossible to dispose of 20 per cent of its generating capacity, even in small lots, at prices sufficiently high to make up the deficit on 8 per cent of the generating capacity sold at less than cost."

We have copied freely from the petitioner's brief because there is thus more clearly presented, than in the petition or the records of the hearing, the real contention of the petitioner, and the

grounds upon which it asks that it be given authority to disregard its apparent contract obligations and establish a revised schedule. In substance the Railroad Commission is asked to assume as a basis for important action on its part, a certain conclusion of law; namely, that the contracts are void. Is there warrant for this? Let us examine the situation as to the contracts a little more closely.

The contracts were entered into, the one with the paper company on April 29, 1904; the one with E. S. Edmonds—afterward assigned to the power company—on April 5, 1905; the one with the lighting company on August 30, 1904. They have all been in force, therefore, approximately ten years.

As has already been indicated the two grounds upon which the petitioner bases his claim that the contracts are illegal and void are (1) that the petitioner being a public utility, the contract rates are grossly and illegally discriminatory as against any consumer or consumers which might desire to contract for the surplus current; that this surplus current, if sold to consumers at a price which would bring legitimate returns, would be much higher than the contract prices; (2) that the petitioner being a public utility, and the rates being much below cost of service, were illegal from their inception, and therefore void as against public policy.

From the petition it appears that for a time several years ago the power company sold its surplus current, or a portion of it, to the city of Rhinelander for public lighting. The rates named in that contract are not in evidence. There was no testimony introduced at the hearing to show that any possible customer was lost because of unduly high rates asked for the surplus current, nor to prove that there had been any opportunity to dispose of the surplus current at any rate. If there was in fact during the history of the contracts under consideration any unfavorable effect upon the business of the power company, such as would naturally result from discriminatory practices, they were not made to appear.

There are contracts by public-service corporations void through being grossly discriminatory in intent and effect. The case of *Handy v. Cleveland & M. R. Co.* 31 Fed. 689, is an illustration: The Standard Oil Company threatened to store its oil until it

could lay a pipe line, unless its oil was carried by the defendant railway company at 10 cents a barrel, and all other oil producers charged for the same shipment 35 cents a barrel, of which latter rate 25 cents per barrel was to be turned over to the Standard Oil Company. The receiver of the road fearing to lose the business of the Standard Oil Company, acceded to the demand of the shipper. The court held that such a contract was a gross and wanton discrimination against the competitors of the Standard Oil Company. "The receiver of an insolvent railroad company cannot unjustly discriminate in the charges imposed on rival shippers over his road in order to increase his service."

Another of a similar character is *Sanmons v. Kearney Power & Irrig. Co.* 77 Neb. 580, 8 L.R.A. (N.S.) 404, 110 N. W. 308: The defendant in this case was a public-service corporation in the business of digging and operating irrigating canals and ditches, and selling water rights. In 1889 it mortgaged a ditch, right of way, and other property near Kearney, Nebraska, to secure a loan of \$150,000. A year later the mortgagor company entered into a contract with the Northwestern Electric Heat & Power Company, giving the latter a fifteen-year right to take water from the canal, the contract containing a renewal option for a second fifteen years. The contract also contained this provision: "The party of the first part further agrees not to sell water for power to any person or corporation intending to compete with the party of the second part." The irrigation company having defaulted on its interest, one Sanmons for the bondholders brought suit to foreclose the mortgage in 1903. The Heat & Power Company intervened. The lower court ordered the mortgaged property sold, subject to the contract rights of the intervener, but held that the contract with the Heat & Power Company was illegal because unjustly discriminatory. Appeal was taken to the supreme court of the state, and the lower court's order was affirmed. The supreme court said, in reviewing the lower court's ruling as to the validity of the contract: "Here there was an attempt to give the intervener an exclusive right for a term of years to use water which under the law the irrigation company was bound to furnish to the public on equal terms, and . . . is contrary to public policy and illegal." In this case discrimination was deliberately planned and carried out, and

was not merely incidental to the operation of the contract. Discussing this point the court said: It (the utility) has no "right or . . . power to bind itself by contract which, if enforced, would render it unable to serve the public on those terms, or to carry out its main purpose."

And, finally, § 1797M-91 [Wis. Stat. 1911] disposes definitely of the charge of discrimination as follows: "The furnishing of any public utility, of any product or service at the rates and upon the terms and conditions provided for in any existing contract executed prior to April 1, 1907, shall not constitute a discrimination within the meaning specified."

In view of the foregoing the Commission finds that the charge that the contract rates are grossly discriminatory is not sustained.

The contention that the contracts were void at their inception as against public policy leads us to the consideration of what is meant by public policy as affecting the validity of contracts, and the judicial construction placed upon it.

Greenhood, a writer of recognized authority upon the subject, says in his work on Public Policy:

"A contract whose object is to secure to the obligee a monopoly in business controlled by a public corporation or quasi public corporation, or which gives to one an exclusive use for public purposes of lands held by such corporation, or by a private owner, if subject to the right of eminent domain, is void." p. 672.

"Agreements which secure to one an interest in all the business of a particular character done by a public corporation, but in no wise depriving others of the benefit of the business, are valid." p. 676.

"If a contract be reasonable when made the fact that it subsequently becomes . . . burdensome upon the obligor . . . does not affect it." p. 739.

"It is the tendency of the class of contracts to which an agreement belongs which determines its validity, and not the fact whether in the particular case it had any prejudicial effect." p. 5.

"By 'public policy' is intended that principle of the law which holds that no subject can lawfully do that which has a tendency to be injurious to the public or against the public good, which may be termed the policy of the law, or public policy in relation to the administration of the law." p. 2.

The trend of court decisions is to the effect that when it is sought to annul a contract on the grounds of public policy it must be made very clear that the contract is not only opposed to the practices and customs of orderly society, but that it is antagonistic to the general policy of the law of the country.

The public policy of a state must be ascertained from the Constitution, laws, and decisions of the state, and not from general considerations of the supposed public interests and policy of the state beyond what such sources of information make known to the state. *Vidal v. Philadelphia*, 2 How. 127, 11 L. ed. 205.

"But the very meaning of public policy is the interest of others than the parties, and that interest is not to be at the mercy of the defendant alone." *Beasley v. Texas & P. R. Co.* 191 U. S. 492, 48 L. ed. 274, 24 Sup. Ct. Rep. 164.

"The term 'public policy' may indeed be used only in the sense of the policy of the law, and in that sense it forms a just ground of judicial decision. It amounts to no more than that a contract or condition is illegal which is against the principle of the established law." *Egerton v. Brownlow*, 4 H. L. Cas. 123.

"Public policy as bearing upon the validity, or, in other words, the judicial enforceability of contracts, is that principle which maintains that a person cannot rightfully do or bind himself to do that which is inimical to the public good." *Superior v. Douglas County Teleph. Co.* 141 Wis. 363, 122 N. W. 1023.

"This means no more, we take it, than that it should be made to appear clearly, that is beyond reasonable controversy, that the contract is void, as contrary to law or sound morals, else it should be sustained." *Atkinson v. Chicago & N. W. R. Co.* 93 Wis. 363, 67 N. W. 703.

"In case of the contract being between a private corporation and the state or other public corporation, whatever advantage the particular customer has over general customers, obviously inures to the benefit of the latter in the aggregate. In other words, in the ultimate there is no discrimination which is inimical to the public good, and hence no violation of public policy." 141 Wis. 370.

"The public policy of the government is to be found in its statutes, and when they have not directly spoken, then in the decisions of the courts, and the constant practice of the govern-

ment officials; but when the law-making power speaks upon a particular subject over which it has constitutional power to legislate, public policy in such a case is what the statute enacts." *United States v. Trans-Missouri Freight Asso.* 166 U. S. 290, 41 L. ed. 1007, 17 Sup. Ct. Rep. 540.

As "the right of private contract is no small part of the liberty of the citizen, . . . the usual and most important function of courts of justice is rather to maintain and enforce contracts, than to enable parties thereto to escape from their obligation on the pretext of public policy, unless it clearly appear that they contravene public right or the public welfare." *Baltimore & O. S. W. R. Co. v. Voigt*, 176 U. S. 498, 44 L. ed. 560, 20 Sup. Ct. Rep. 385.

The paramount public policy . . . is that men of full age and of competent understanding shall have the utmost liberty of contracting, and that their contracts, when entered into freely and voluntarily, shall be held sacred, and shall be enforced by the courts of justice; and that you are not lightly to interfere with this freedom of contract. *Sir George Jessel, M. R., in Printing & N. Registering Co. v. Sampson*, L. R. 19 Eq. 462.

In *Walla Walla v. Walla Walla Water Co.* 172 U. S. 1, 43 L. ed. 341, 19 Sup. Ct. Rep. 77, the city of Walla Walla, after having made a contract with the water company, which contract had been in force six years, and faithfully carried out on the part of the water company, pleaded that the contract was not a valid and binding one so far as it bound the city by stipulation not to maintain or become interested in another system of waterworks. The city contended that the contract it had itself made was in contravention of public policy. The court held that "where a contract . . . is innocuous in itself, and is carried out with due regard to the good order of the city and the health of its inhabitants, the aid of the police power cannot be invoked to abrogate or impair it."

In *Los Angeles v. Los Angeles City Water Co.* 177 U. S. 558, 44 L. ed. 886, 20 Sup. Ct. Rep. 736, where the city had leased a private company its waterworks, and in the contract it was stipulated that the city should regulate the rates charged by the lessees, providing only that the rates fixed should never be lower than those in force when the lease was made, and the city later

undertook to make a new schedule of rates, fixing them below those in force when the lease was made. The court held "that it was not within the power of the city authorities, by ordinance or otherwise, afterward to impose additional burdens as a condition to the exercise of the rights and privileges granted."

In *Vicksburg Waterworks Co. v. Vicksburg*, 185 U. S. 65, 46 L. ed. 808, 22 Sup. Ct. Rep. 585, where the city proposed to disregard its contract with the waterworks company on the ground that the city acted in excess of its powers, the court says: "After the lapse of that long period and the continuous acquiescence of the city in the contract as a valid and subsisting one, the city . . . now insists that the said contract was invalid because in excess of its power to contract. . . . Subsequent legislation, state and municipal . . . cannot impair the contract rights of the water company within the protection of the Constitution of the United States, unless the city can point to some inherent want of legal validity in the contract."

In citing the *Manitowoc Street Railway Case*, the petitioner's attorneys would seem to fail to distinguish between utility contracts to which a municipality is a party, and those in which two utilities or one utility and one private corporation are the parties. In 145 Wis. 13, 140 Am. St. Rep. 1056, 129 N. W. 925, the *Manitowoc & Northern Transportation Company* undertook to advance the rates between Manitowoc and Two Rivers from 10 cents to 15 cents, notwithstanding that the company had contracted with the city, on consideration of the right to enter the city, to maintain a 10 cent rate. In that case the city was a party. The court held that the contract was valid until such time as the state decided to intervene and change conditions. That is, the city, having no specific authority granted to it to enter into such a contract, could only enter as the agent of the state, the latter being the principal. The state, through the Railroad Commission or otherwise, might at any time, therefore, substitute itself for the city, and, if it found the rate unreasonably low, could with the acquiescence of the other party to the contract, the street railway company, abrogate the contract. This principle is also involved in the case of *Worcester v. Worcester Consol. Street R. Co.* 196 U. S. 548, 49 L. ed. 595, 25 Sup. Ct. Rep. 327, wherein Mr. Justice Peckham, who wrote the opinion of the court, says: "In the view

we take of this subject it may be assumed for the purpose of argument that the city of Worcester had power under the legislation of the state to grant the right to extend the location of the railroad company's tracks upon the restrictions or conditions already mentioned. It may also be assumed, but only for the purpose of the argument, that the restrictions or conditions contained in the orders or decrees of the board of aldermen, upon their acceptance by the company, became contracts between the city and the company. The question then arising is whether the legislature, in the exercise of its general legislative power, could abrogate the provisions of the contract between the city and the railroad company with the assent of the latter, and provide another and a different method for the paving and repairing of the streets through which the tracks of the railroad company were laid under the permit of their extended location. We have no doubt that the legislature had that power. A municipal corporation is simply a political subdivision of the state, and exists by virtue of the exercise of the power of the state through its legislative department."

Applying the principles laid down by the courts and the text writers as cited above, we have to determine, first, whether the contracts under consideration were void from the beginning because the rates named were unreasonably low. The Commission does not feel warranted in so finding.

Are the rates named in the contracts so low at the present time as to be unreasonable, and to jeopardize the utility's ability to serve the public? And, if they are, has the state by its agent, the Railroad Commission, the power to authorize the raising of them? These are the really vital questions raised in the case.

First. Are the rates named in the contract unreasonably low at this time? We can determine this in a satisfactory manner only by ascertaining what it is costing the utility to produce and furnish the service; or rather what should it cost the utility to produce its commodity under reasonably efficient operation. This leads to a consideration of the costs involved somewhat in detail.

Most of the evidence presented at the hearing relative to the valuation of the property and the earnings and expenses of the Rhinelander Power Company was submitted by Professor H. J.

Thorkelson, who appeared as witness for the petitioner. Professor Thorkelson's testimony tended to bring out the following points:

(1) That the actual money received by the power company for current sold during the calendar year, 1913, was \$14,000.

(2) That the company could claim for service during that period a maximum income of \$20,000, based upon its several contracts and the amount of current delivered in excess of the contract requirements.

(3) That the company's expenditures for 1913, and the proper expenses which have not actually resulted in expenditures, amounted to \$22,637, and exceeded both the actual money received and the maximum income that the company could claim.

(4) That the cost of producing the same electric power under like circumstances by means of a steam-power plant would exceed the costs for the petitioner's hydro-electric plant by \$29,200 per year, and that hence there exists a value in the water-power rights in addition to the physical value, which should be considered in fixing the rates for service now being furnished.

The amount of income received from the several sources to make up the total of \$14,100 referred to by the witness was not shown, but presumably it was divided as follows:

Rhinelanders Lighting Company	\$5,100
Rhinelanders Paper Company	
Contract of Aug. 29, 1904	6,000
Contract of April 5, 1905	3,000
Total	\$14,100

The maximum income that the petitioner could claim was shown by the testimony to be divided as follows:

Rhinelanders Lighting Company	\$ 5,100
Rhinelanders Paper Company	
Contract of Aug. 29, 1904	\$6,000
Contract of April 5, 1905	7,500
Excess current	1,255
Wis. River Valley Improvement Co. dividends	150
Total	\$20,005

The amount claimed under the provisions of the contract of April 5, 1905, is based upon 500 horse power at a rate of \$15 per horse power per year, and the excess amount is based upon the quantity of current which Professor Thorkelson estimates or computes was delivered to the paper company at various times

during 1913 in excess of that to which the paper company was entitled under the two contracts. There is no evidence to show whether or not the power company has attempted and failed to collect the difference between the actual receipts and the amount claimed, nor to show whether any difference of opinion exists relative to the interpretation of the contract provisions. Consequently, it appears that the figures for the maximum income claimable were submitted to furnish a sidelight on the general circumstances in this matter, and not as a point requiring the Commission's interpretation.

The figures which Professor Thorkelson introduced as the cost of producing and delivering power from the present hydro-electric plant of the Rhinelander Power Company are shown in table I.

TABLE I.

Summary of Prof. Thorkelson's Estimate of Hydraulic Power Costs Calendar Year, 1913.

Labor	\$3,620	
Repairs	602	
Supplies for equipment	59	
Supplies for general office	108	
Tolls, Wis. River Valley Imp. Co.	1,600	
Total above		\$6,061
General	3,000	
Total operating expense		\$9,061
Fixed charges:		
Interest, 8%	\$8,355	
Depreciation, 4%	4,177	
Taxes 1%	1,044	13,576
Total cost of power		\$22,637

In order that the items of table I. may be fully understood, some explanation will be added at this point. The amount for labor, \$3,620, is the sum paid by the power company to the copartnership of Forbes & Wixson for the operating of the plant. The testimony of Mr. Wixson shows that by agreement this amount is paid annually for "labor involved in generation, transmission, distribution, and superintendence . . . together with the furnishing of oil and waste used in the operation of the plant." Repairs, supplies for equipment, and supplies for general office, are items of expense taken from the books of the company. It was asserted that the amount spent for repairs was a mere trifle compared with what should have been expended for maintenance of the power plant and transmission line, because the company's

income has been insufficient to provide funds for this purpose. The toll paid to the Wisconsin Valley Improvement Company is an assessment for the maintenance and operation of a reservoir system in the northern part of the state, tributary to the Wisconsin river, which reservoir system would in all probability be maintained by the individual users. The item of \$3,000 for general expenses is not an actual expense, but is, according to Professor Thorkelson, a comparative allowance for salaries and general expenses. Interest, depreciation, and taxes are fixed charges based upon the Commission's appraisal of the physical property, as shown in table II. No objection was raised to the valuation of the physical property, but the petitioner asserted that further allowance should be made on account of the value of the water power, and the need of additional material and supplies and cash capital. But in arriving at his figure for fixed charges, the witness employed the Commission's figures for the cost new, amounting to \$104,433.

TABLE II.

Commission's Appraisal of Physical Property of Rhinelander Power Company.

	Cost New	Present or Depreciation Value
Land	\$ 11,834	\$11,834
Transmission & Distribution	8,619	6,072
Building & Miscellaneous Structures	19,184	17,649
Plant Equipment	52,534	38,551
General Equipment	100	100
Total	\$92,271	\$74,156
Add 12% (see note below)	11,073	8,899
Total	\$103,344	\$83,055
Material & Supplies	470	470
Total	\$103,814	\$83,525
Nonoperating plus 12%	619	358
Total	\$104,433	\$83,883

Note.—Addition of 12 per cent to cover engineering, superintendent, interest during construction, contingencies, etc.

Coming now to a consideration of the hypothetical steam plant, we find that Professor Thorkelson has estimated the investment necessary for a plant of 1,200 kw. capacity, the main units being three 400 kw. turbo-generators. A summary of this estimate is shown in table III.

TABLE III.

Summary of Prof. Thorkelson's Estimate of Investment in Steam Turbo-Generator Plant.

2—400 1 cw. steam turbo-generators	\$33,600
3—400 hp. boilers with stokers and settings	18,000
2—Exciters	1,000
3—Condensers with piping	10,800
Switchboard	4,800
Steam piping	3,000
Condenser intake	2,000
Heater and pumps	1,200
Building with stack	13,000
Power house wiring	2,000
Transformers	3,000
Distribution	7,000
Land	1,000
Total	\$100,400
Add 15 per cent for engineering, interest during construction, contingences, etc.	15,060
	\$115,460

After deducting from the total of table III. the amount allowed for transformers and distribution, the remainder, \$104,000, is equal to an investment of \$86.60 per kw. of station capacity. An investment of this amount would hardly be considered excessive.

The total estimated investment was placed, in round numbers, at \$116,000, and upon this were computed the fixed charges consisting of interest, 8 per cent; depreciation, 5 per cent; and taxes, 1 per cent. The fixed charges thus determined amount to \$16,240.

The quantity of coal that would be required by the assumed plant was determined by allowing $2\frac{1}{2}$ pounds of coal per kw. hr. for an annual output of 5,000,000 kw. hrs., which amount Professor Thorkelson determined was delivered to the customers of the power company during the year 1913. This allowance of $2\frac{1}{2}$ pounds of coal per kw. hr. appears to be very low, although it was brought out at the hearing that the rate of fuel consumption was purposely assumed to be low because of the unusually good load factor of the plant. The load factor mentioned at the hearing was 80 per cent, but upon examination of the figures then presented we find that this is the load factor for an average day, and not the annual load factor. The highest load on the station during the year is not on record, but by taking the station capacity in lieu of the actual peak load, it is found that the load factor (or station factor, it might be called) is about 47.5 or 48 per cent. Even this figure represents an unusually good load factor, but still it appears doubtful that the coal consumption

would run lower than 2.75 or 3 pounds per kw. hr. The allowance for labor and general expenses, on the other hand, seems to be somewhat more than would be required, considering the character of the plant and the conditions under which it would operate. The petitioner's estimate of operating costs for the assumed steam plant are summarized in table IV.

TABLE IV.

Summary of Prof. Thorkelson's Estimate of Steam Power Costs.

Fuel 5,000,000 kw. hrs. @ 2½ lb coal (6250 T @ \$4.00)	\$25,000
Labor:	
3 engineers	\$2,700
3 firemen	2,160
2 repair men	1,200
Misc. supplies & expenses (oil, water, etc.)	6,060
	1,500
Total Station Expense	\$32,560
General	3,000
Total Operating Expense	\$35,560
Fixed charges:	
Interest 8 per cent	\$9,280
Depreciation 5 per cent	5,800
Taxes 1 per cent	1,160
	16,240
Total Cost of Power	\$51,800

The theoretical saving produced by the operation of the petitioner's hydro-electric plant in lieu of a steam plant was shown by Professor Thorkelson to be the difference between the total of table IV., \$51,800, and the total of table I., \$22,637, which is \$29,163 per year. The testimony with reference to these matters does not proceed beyond the determination of the theoretical saving. What valuation should be placed upon the water-power rights on account of the alleged saving, and what rates would yield a fair return, were matters not brought out by the petitioner.

However, before proceeding further, let us see what will result from some revision of the figures so far brought forth. In table V. is shown a revised estimate of the cost of furnishing power from the hydro-electric plant.

TABLE V.

Revised Estimate for Hydraulic Power Costs.

Operating expenses reported	\$ 6,061
Taxes reported	1,338
Depreciation at 2.5 per cent	2,600
General expense (additional allowance)	2,000
Interest 8 per cent on \$104,433	8,355
Total Power Cost	\$20,354

It will be observed that instead of 4 per cent for depreciation, 2.5 per cent is employed in the foregoing table. The rate of

depreciation of hydro-electric properties with transmission lines is ordinarily less than that of steam stations with extensive distribution systems. The rate of depreciation for the latter is often about 4.5 per cent, computed on a straight line basis. On a sinking-fund basis, the reserve chargeable to operating expense is, of course, somewhat lower.

The additional allowance for general expense is placed at \$2,000 instead of \$3,000. This appears to be ample, considering the amount already paid to Forbes & Wixson for operating the plant, and the amount already included in the expense accounts for general office supplies and expenses.

Some changes, likewise, have been made in the estimate of the steam-power costs, as may be seen in table VI.

TABLE VI.

Revised Estimate of Power Costs for a Hypothetical Steam Plant Similar to the Plant Assumed by Professor Thorkelson.

Fuel, 5,000,000 kw. hrs. 2.75 lb coal (6875 T. @ \$4.00)	\$27,500	
Steam supplies and expenses	400	
Misc. power plant supplies and expenses	600	
Maintenance	1,750	
Labor:		
Chief Engineer	\$ 900	
2 asst. engineers	1,444	
3 firemen	1,800	4,140
Total station expense		34,390
General		2,000
Total operating expenses		\$36,390
Fixed charges:		
Interest 8 per cent	\$9,280	
Depreciation 3 per cent	3,480	
Taxes and insurance 1½ per cent	1,740	14,500
Total cost of power		\$50,890

In the foregoing table, fuel consumption has been placed at 2.75 pounds of coal per kw. hr. This brings the cost to \$27,500, instead of \$25,000, per year. While, at first, it may appear that a considerable reduction has been made in the estimate of labor cost, it will be found that this is largely compensated for by a separate allowance for maintenance. Depreciation which the petitioner's witness placed at 5 per cent has been reduced to 3 per cent. On a sinking fund basis, 3 per cent of the investment per year should be a sufficient charge to the depreciation account for a well-built steam power plant. An allowance of 1½ per cent for taxes and insurance takes the place of the witness allowance of 1 per cent for insurance alone. In the Commis-

sion's estimate, general expenses are placed at \$2,000, instead of \$3,000. It is possible that Professor Thorkelson's figure of \$3,000 includes allowance for insurance, in which case the difference between the figures for general expense is not as much as it appears to be.

The theoretical saving found as a result of the Commission's revision of Professor Thorkelson's estimate is \$30,545. This is so close to the theoretical saving found by the witness himself, that it appears that his estimates, as a whole, are not unreasonable as far as they go. However, there are other matters not touched upon at the hearing, which seem to have a vital bearing, and should be considered in fixing a value of the water power. For example, the present hydraulic plant is operated without a steam auxiliary plant, and the consumers receive power subject to the vicissitudes of the water supply. Since it is necessary for the disposal of the petitioner's power to establish terms and conditions upon the availability of water, which varies from time to time, it seems quite evident that the hydraulic power has not, in this instance at least, an equal value with steam power continuously supplied.

In order to arrive at a condition under which the service rendered by the hydraulic power plant would be equal in value to that which the hypothetical steam plant could furnish, it is necessary to assume a situation in which the former would be assisted by an auxiliary plant of some kind capable of eliminating the risks of incomplete service on account of an inadequate water supply. The facts necessary for a detailed estimate on that subject have not been placed before the Commission, but we have attempted, nevertheless, to show in table VII. about what additional costs might be expected for a steam plant serving in an auxiliary capacity to the petitioner's hydraulic plant.

TABLE VII.

Estimated Additional Costs for an Auxiliary Steam Power Plant.

Fuel for 500,000 kw. hrs. @ 8 lb coal per kw. hr.	\$ 8,000
Supplies and expenses	300
Maintenance	750
Labor	1,000
Total expenses	10,050
General	750
Total operating expenses	10,800
Fixed charges: interest, depreciation, taxes, insurance, 12½ per cent	
on \$90,000	11,250
Total cost of reserve power	\$22,050

The theoretical saving of \$30,000 for the hydraulic plant is very greatly reduced when allowance is made for the costs of the assumed auxiliary steam plant. Deducting \$22,000 on account of operating and steam auxiliary, the saving which remains is only about \$8,000 per year. A value of some \$80,000 might be claimed, because of this estimated saving, except for the fact that other circumstances cast further doubt upon its worth. First, the company does not possess an auxiliary or reserve power of any kind, and consequently the value which would exist in power continuously supplied is now more or less dormant. Secondly, the saving which has been determined by means of the foregoing estimates presupposes that the petitioner would be able to dispose of a large quantity of steam, electric power, or of hydro-electric power, aided by steam service under a schedule of rates based on costs for such service; but there is nothing in evidence to demonstrate the marketableness of the power under those conditions. With these facts in mind it appears that \$800,000 is about the maximum value that could be fairly allowed for the water-power rights under present conditions. This amount added to the value of physical property, working capital, and going value, would bring the total valuation to approximately \$200,000.

COST OF SERVICE PER UNIT.

In order to arrive at a theoretical unit cost of service, some computations have been made wherein were employed the actual operating expenses for the year 1913: depreciation, \$2,600; additional general expense, \$2,000; and interest on \$200,000 or \$16,000. These figures are summarized in table VIII.

TABLE VIII.

Theoretical Power Costs for Petitioner's Business.

Operating expenses as reported	\$6,061
Taxes	1,338
Depreciation	2,600
General expense (additional allowance)	2,000
Interest	16,000
Total Power Costs	\$27,999

For the purpose of illustration the total power costs, amounting to \$28,000, may be divided equally between demand and output costs, in which case there would be an expense of \$14,000 for the demand and \$14,000 for the output.

It has already been said that the witness for the petitioner has determined that the amount of current sold in 1913 was approximately 5,000,000 kw. hrs. The output cost per unit would therefore be 0.28 cts. per. kw. hr.

Making due allowance for power factor and losses, it appears that the amount of power that the petitioner could deliver to consumers is about 1,000 kw. or 1,340 horse power, which corresponds closely to the aggregate horse power mentioned in the several contracts. Dividing the demand cost, \$14,000, by these figures, it is found that the demand cost per unit is \$14.00 per kw. or \$10.40 per h. p. per year. By applying these units to the service furnished, the division of the cost between the customers of the company may be readily ascertained, as shown below.

Cost of Service for Paper Company.	
1,000 h.p. at \$10.40 per h.p. per year	\$10,400
4,410,000 kw. hrs. per year at 0.28 cts. per kw. hr.	12,348
Total for Paper Company	\$22,748
Cost of Service for Lighting Company.	
310 h.p. at \$10.40 per h.p. per year	3,224
590,000 kw. hrs. per year at 0.28 cts. per kw. hr.	1,652
Total for Lighting Company	4,876
Total for Both Companies	\$27,624

These figures reduced to a flat rate per h. p. reveal considerable differences between the paper company and the lighting company. For the former the cost is \$22.75 per h. p., while for the latter it is \$15.70. However, if a comparison be made of the use of the power contracted for, it will be found that the load factor of the service delivered to the paper company is about 67.5 per cent and to the lighting company about 29 per cent. In other words, the amount of current consumed by the paper company represents an average of 16.2 hours' daily use of its contract load, while the consumption of the lighting company is equivalent to only 7 hours' use.

The foregoing computations of the cost are based on the theory that the sale of electric current to the lighting company should receive the same treatment as that to the paper company; but since the lighting company has preference to the supply, to the extent of 280 horse power, it is not unreasonable to assume that

this service should bear a somewhat greater proportion of the cost and a higher rate of charge.

Another way of dealing with the rate question is to construct a "cost curve" or tabulation representing the variation of the cost per kw. hr. with the length of use of the load. This may be done by reducing the demand cost to a unit per day and adding to it the output cost. It has been shown hitherto that the demand cost is equal to \$14 per kw. per year. This is also equal to 384 cts. per kw. per day. The output unit cost is 0.28 cts. per kw. hr. Consequently, the cost per kw. hr. is 4.11 cts. when the load is used one hour per day. The variation in cost is shown in table IX.

TABLE IX.
Variation in the Cost of Power with Variation in the Length of Use.

Hours Use of Load Daily	Output Cost at 27¢ per kw. hr.	Demand Cost	Total Cost	Total Cost per kw. hr.
1	0.28 cts.	3.84 cts.	4.11 cts.	4.11 cts.
2	0.56 "	"	4.40 "	2.20 "
3	0.84 "	"	4.68 "	1.56 "
4	1.12 "	"	4.96 "	1.24 "
5	1.40 "	"	5.24 "	1.05 "
6	1.68 "	"	5.52 "	.92 "
8	2.24 "	"	6.08 "	.76 "
10	2.80 "	"	6.64 "	.66 "
12	3.36 "	"	7.20 "	.60 "
14	3.92 "	"	7.76 "	.55 "
16	4.48 "	"	8.32 "	.52 "
18	5.04 "	"	8.88 "	.49 "
20	5.60 "	"	9.44 "	.47 "
22	6.16 "	"	10.00 "	.45 "
24	6.72 "	"	10.56 "	.44 "

The foregoing table indicates that the cost of service for the paper company is about 0.5 cts. per kw. hr. and, considering the preference given to the lighting company, about 0.95 cts. per kw. hr. for the latter. The earnings estimated on this basis are as follows:

Estimated Earnings on Kw. Hr. Basis.

Paper Company 4,410,000 kw. hrs. at 0.5 cts. per kw. hr.	\$22,050
Lighting Co. 590,000 kw. hrs. at 0.95 cts. per kw. hr.	5,605
Total Estimated Earnings	\$27,655

In order to adjust the variation in the charge to both the amount of the demand and the quantity of current used, the following schedule has been suggested, and upon applying it to the service furnished to the paper and lighting companies it is

found to agree very well with costs which have already been shown.

Suggested Schedule of Rates.

Demand Charge:

\$30.00 per year for each kw. of the first 10 kw. of demand.
 20.00 " " " " " " " " next 40 " " "
 10.00 " " " " " " in excess of 50 " " "

Energy Charge:

0.6 cts. per kw. hr. for current used up to an amount equivalent to 20 per cent of the continuous use of the maximum demand.

0.2 cts. per kw. hr. for all current in excess of 20 per cent of the continuous use of the maximum demand.

Estimate of Revenues under Proposed Schedule.

Rhinelanders Lighting Company:

Estimated Peak 231.5 kw.

" Consumption 590,000 kw. hrs.

Demand charge—

10 kw. @ \$30	\$300	
40 " " 20	800	
181.5 " " 10	1,815	\$2,915

Energy charge—

405,588 kw. hr. @ 6 cts.	\$2,434	
184,412 " " 0.2 "	369	2,803

Total for Lighting Company		\$5,718
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Rhinelanders Paper Company:

Estimated Peak 746 kw.

" Consumption 4,410,000 kw. hrs.

Demand charge—

10 kw. @ \$30	\$300	
40 " " 20	800	
649 " " 10	6,460	\$8,060

Energy charge—

1,306,192 kw. hrs. @ 0.6 cts.	\$7,837	
3,103,808 " " 0.2 "	6,208	14,045

Total for Paper Company		\$22,105
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Total Estimated Revenue		\$27,823
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The revenue received for current for the calendar year 1913 was \$14,100, as shown heretofore, although the total earning, to which the petitioner believes it was probably entitled under the terms of the several contracts, was \$20,005. During that period, the operating expenses, including an allowance for depreciation, were \$9,999. The gross income was therefore only \$4,101, which is 3.9 per cent on the cost new and 2.0 per cent on a valuation of \$200,000. The revenues received for the year ending June 30, 1914, increased to \$15,399. The operating expenses remained about the same; namely, \$9,888. For this period the gross income was \$5,511, which is 5.3 per cent on the cost new and 2.8 per cent on \$200,000. Further allowance for general expenses, which now appear to be low, would consume a part of

this return. These facts show that the rate of return upon the investment in physical property is low in comparison with the usual earnings of many other electric plants, and, of course, that any additional value on account of water-power rights still further reduces the rate of return. While these circumstances seem to furnish a strong argument for an increase in the petitioner's rates, it must be said, on the other hand, that the marketableness of the petitioner's supply of power at rates much higher than those now charged has not been demonstrated before the Commission, and, since ability to dispose of power in a somewhat limited market constitutes as influential a force upon the value of the supply as any other factor, the establishment of rates regardless of such circumstances is a delicate and difficult task which should, however, be limited by a reasonable maximum based upon the facts brought out in this case.

Has the Commission the power to authorize the changing of the contract rates?

The power to regulate rates of public-service corporations is a power belonging exclusively to sovereignty. Under our form of government it inheres in the state and is given expression by the legislature. In the case of a municipality the legislature may and does sometimes divest itself temporarily of the right to interpose to fix or change rates, by giving the municipality the power to act for it in regulating rates. But the legislature never divests itself of that power by conferring it upon a public-service corporation. Any rates named, therefore, by a public-service corporation in any contract, are always subject to change by the legislature, if it so choose. This power of the state to regulate rates is implicit in every contract touching rates made by a public utility.

For the state through the Commission to interpose in the present case, or in any such case, to change or authorize a change in the rates named in a contract, is not such an impairment of contract obligations as comes within the inhibition of the Constitution, but instead is carrying out one of the terms or provisions of the contract (*Manitowoc v. Manitowoc & N. Traction Co.* 145 Wis. 13, 140 Am. St. Rep. 1056, 129 N. W. 925). A case decided by the supreme court of Wisconsin as late as December, 1914 (*Minneapolis St. P. & S. Ste. M. R. Co. v. Menasha Wood-*

en Ware Co. — Wis. —, 150 N. W. 411), makes very clear this principle.

The defendant company had made contracts with the "Soo" railway company prior to the enactment of the railroad commission law in 1905, for the transportation of certain lumber products. Some time after the passage of the law referred to, and acting under the authority of the law, the railroad company filed a new schedule of rates much higher than those named in the contracts which were to run as long as the defendant company maintained a factory at a certain point. The defendant refused to pay the higher rates, and action was brought by the railway to compel the payment of amounts due, calculated on the new rates. The lower court held for the defendant. The supreme court held for the railroad company, on the ground that the contract entered into so far as it related to rates was subject at all times to the paramount right of the state to regulate, and that the approval by the Railroad Commission of the new schedule of rates filed by the railroad company was a proper exercise of that paramount right of the legislature.

The court in the case cited refers to the case of *Superior v. Douglas County Teleph. Co.* 141 Wis. 363, 122 N. W. 1023, where the opposite principle seems to be upheld, but says that the contract was held in the Superior Case to be valid and binding because of it coming under the exemption of § 1797m-91 as to discrimination.

The right of the legislature through the Railroad Commission to change or authorize a change in rates named in contracts made by public service corporations is well-established.

We have seen from the detailed analysis of the power company's business that it is not earning, and cannot hope to earn at any time under the contract rates, a reasonable return. So wide is the discrepancy between what would be a reasonable return and the amount actually received for its service that the ability of the utility to maintain its service is threatened, if indeed the very existence of the enterprise is not in danger.

Do considerations of public policy require that the power company be permitted to rearrange its schedule in order to secure more nearly a reasonable return? The Commission believe they do.

The petitioner is, in all reason, entitled to a larger earning, and a higher rate of return upon its investment. The Commission believes that it is necessary and right to permit the petitioner to secure more reasonable compensation for its services [so far as it may be possible for it to do so by negotiations with its customers].* A new schedule, however, should be limited by a reasonable maximum based upon the facts brought out in this case.

It is therefore ordered that the petitioner, the Rhinelander Power Company, be and hereby is authorized to make a new schedule of rates for its electrical power [through negotiations with its customers],* which rates shall not exceed the following charges:

Demand Charge (payable in monthly instalments):

\$30.00	per year for each kw. of the first 10 kw. of demand.
20.00	" " " " " " next 40 " " "
10.00	" " " " " " in excess of 50 " " "

Energy Charge:

0.6 cts. per kw. hr. for current used up to an amount equivalent to 20 per cent of the continuous use of the maximum demand.

0.2 cents per kw. hr. for all current in excess of 20 per cent of the continuous use of the maximum demand.

The demand shall be the maximum rate at which energy is used for any continuous fifteen consecutive minutes, and may be determined by the constant or periodic use of any suitable recording or graphic type of demand meter.

[If the petitioner and its customers are not able to agree upon a new schedule, the Commission will, upon a petition reciting such inability to agree, prepare a schedule.]*

Railroad Commission of Wisconsin, by Halford Erickson, John H. Roemer, Commissioners.

* The matter in brackets was stricken out by a supplementary order issued by the Commission on February 10, 1915.

Note.—On the question of the effect of the use, or the purpose of the use to which the property of a corporation is put in determining whether it is a public utility or not, the cases in which this point is discussed with reference to the right to exercise the power of eminent domain may be worth examining. These authorities will be found fully analyzed in notes to Wisconsin River Improv. Co. v. Pier, 21 L.R.A.(N.S.) 538, on "Eminent domain; combination of public and private uses," and to Grafton v. St. Paul, M. & M. R. Co. 22 L.R.A.(N.S.) 1, on "Judicial power over the right of eminent domain," at pp. 77, 80, 81.

CALIFORNIA RAILROAD COMMISSION.

**HOME TELEPHONE & TELEGRAPH COMPANY OF SANTA
BARBARA**

v.

PACIFIC TELEPHONE & TELEGRAPH COMPANY.

[Decision No. 2119; Case No. 522.]

Telephone rates — Commission's jurisdiction — Complaint by rival company.

The Commission has no jurisdiction over a complaint by one telephone company as to the reasonableness of the rates charged by a competitor, either under § 60 or § 62 of the public utilities act,—especially where the complaining company is not a patron of the other.

Telephone rates — Commission's jurisdiction — Where city has not surrendered powers over utilities.

The Commission has no jurisdiction to fix the rates of a telephone company within a city which has not voted to confer upon the Commission its powers over public utilities.

Telephone rates — Discrimination — Commission's jurisdiction — Unfair competition statute.

The Commission has no jurisdiction over a complaint, under an unfair competition statute which provides for prosecution, by the attorney general, of offenders against the act.

Telephone rates — Discrimination — Commission's jurisdiction — City not surrendering powers over utilities.

The Commission has no jurisdiction over discriminatory rates of a telephone company in a city which has not surrendered its power over public utilities, since the only relief to be afforded would be an order raising or lowering the rates, and this the Commission has no power to make; and the fact that a small portion of the lines of the company extend outside of the city is immaterial.

Telephone rates — Reasonableness — Recoupment of losses from low charges.

A telephone company has no right to charge subscribers in one locality unreasonably low rates, and to recoup losses resulting therefrom, by charging subscribers in other localities unreasonably high rates.

Evidence — Voluntary rates — Presumption of reasonableness.

A rate voluntarily established by a public utility must be regarded as prima facie reasonable.

[February 1, 1915.]

COMPLAINT by telephone company that rates of a competitor are unreasonable and discriminatory; dismissed.

Appearances: Richards and Carrier for complainant; H. D.

Pillsbury, James T. Shaw, and Felix T. Smith for defendant;
W. P. Butcher, city attorney, for city of Santa Barbara.

REPORT OF THE COMMISSION.

Thelen, Commissioner: This case involves the rates charged by the Pacific Telephone & Telegraph Company for telephone service in the city of Santa Barbara.

The complaint alleges, in effect, that complainant and defendant are each a telephone corporation engaged in conducting a general telephone business in the city of Santa Barbara and the territory adjacent thereto; that subscribers to defendant's telephone exchange in the city of Santa Barbara may converse not only with persons resident in the city of Santa Barbara, but also with two exchanges known as the Montecito and the Carpinteria exchanges, and with persons living in the Santa Barbara exchange outside the city limits; that complainant maintains a central exchange in the city of Santa Barbara, and that its telephones are connected with certain territory lying outside the city limits of Santa Barbara, including the Montecito exchange and the Goleta exchange; that prior to August, 1908, defendant's predecessor charged as monthly rentals for business telephones in the city of Santa Barbara the sum of \$4 for main line telephones, and \$3 for two-party line telephones, and for residence telephones the sum of \$3, for main-line telephones, and \$2 for two-party line telephones, but that since said date defendant's predecessor and defendant itself have been reducing the monthly rentals for residence telephones, so that since August, 1908, the monthly rental for main-line residence telephones has been reduced to \$1, and for two-party line residence telephones to 75 cents; that on October 1, 1913, defendant had connected with its central exchange in the city of Santa Barbara 1,936 telephones; that in certain other designated exchanges in California defendant is charging for telephone service monthly rates for both business and residence telephones in excess of those charged in Santa Barbara; that plaintiff has 2,920 telephones connected with its central exchange in the city of Santa Barbara, and that its monthly rental for business telephones is \$3 for main-line telephones, and \$2.25 for two-party line telephones, and its monthly rental charge for residence telephones is \$2, for main-line telephones and \$1.50

for two-party line telephones; that ever since 1903 plaintiff has in good faith been engaged in the general telephone business in the city of Santa Barbara; that the expense of maintenance and operation of defendant's telephone exchanges specifically mentioned in the complaint is not greater than similar expenses in connection with defendant's Santa Barbara exchange; that the rates charged by defendant are unreasonable, injurious, and discriminatory as against the complainant, and do not yield an income to the defendant sufficient for the maintenance and carrying on of its business in the city of Santa Barbara, but have been fixed for the purpose of and with the intention to destroy complainant's business, and by unfair and injurious competition to compel complainant to abandon the telephone business in the city of Santa Barbara and vicinity, and with the intent to destroy competition with itself in the city of Santa Barbara. Complainant asks that defendant be cited to appear before the Railroad Commission, and "that the rates of the defendant to be charged in the city of Santa Barbara be fixed by this Commission, and that the discriminatory rates of the defendant in the city of Santa Barbara be prohibited."

The defendant, in its answer, challenges the jurisdiction of the Railroad Commission to entertain the complaint, on the ground that this is not a complaint on the Commission's own motion, nor is it signed by the mayor or president or chairman of the board of trustees or a majority of the council, commission or, other legislative body of Santa Barbara or by twenty-five consumers or purchasers or prospective consumers or purchasers of telephone service, as provided in § 60 of the public utilities act, referring to complaints as to the reasonableness of public utility rates.

Defendant further denies that its rates are unreasonable, injurious, and discriminatory, or unreasonable or injurious or discriminatory as against complainant, or at all; admits, in effect, that its rates do not yield a sufficient income for carrying on its business in Santa Barbara, but contends that complainant cannot raise this point; denies that its rates in Santa Barbara and vicinity have been fixed for the purpose of destroying complainant's business, but alleges that they have been reduced for the purpose of protecting its property and business in the city of Santa Barbara and vicinity from the competition of complainant; alleges

that this Commission's jurisdiction to establish telephone rates in Santa Barbara is confined to rates for service between points within the incorporated city of Santa Barbara and points outside said limits, or between two or more points, both of which are outside the city limits, and that the rate-fixing power invoked by the complainant's prayer rests with the governing body of the city of Santa Barbara; denies that discriminatory rates exist in the city of Santa Barbara; and avers that, in so far as differences in rates between Santa Barbara and other points may be concerned, these differences rest on differences in circumstances involved in this case, entirely traceable to complainant and complainant's own acts, in particular complainant's invasion of a field already served by defendant's predecessor. Defendant asks that the complaint be dismissed.

A public hearing was held before Commissioner Eshleman in Santa Barbara on March 9, 1914. At this hearing certain evidence was introduced by complainant, but defendant rested its case without the introduction of any evidence, insisting that the Commission has no jurisdiction to grant the relief asked for in the complaint. The city of Santa Barbara appeared through its city attorney, and also urged that the Commission has no jurisdiction to grant the relief prayed for. The case was submitted on briefs, which have now been filed.

Under order of this Commission on January 2, 1915, and on written consent of all the parties on file herein, the preparation of the opinion and order herein was transferred from Commissioner Eshleman to myself.

As will be observed from the foregoing statement of facts, the complainant asks relief under two heads: (1) That the rates of defendant to be charged in the city of Santa Barbara shall be fixed by this Commission, and (2) that the discriminatory rates of the defendant in the city of Santa Barbara be prohibited. The relief first asked involves the reasonableness of rates. The relief second asked involves the entirely different question of discrimination in rates. I shall consider these matters separately.

Complainant first asks this Commission to establish the rates charged by defendant for telephone service in the city of Santa Barbara. Defendant contends that the Commission has no jur-

isdiction to proceed under this head, and in this connection relies on § 60 of the public utilities act, reading in part as follows:

"Complaint may be made by the Commission of its own motion, or by any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural, or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public utility, including any rule, regulation, or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission; provided, that no complaint shall be entertained by the Commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, or telephone corporation, unless the same be signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city and county, or city or town, if any, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers or prospective consumers or purchasers, of such gas, electricity, water, or telephone service."

Under this section, it would seem that defendant's point, in so far as it refers to the question of the reasonableness of the rates charged by the defendant, is well taken. This complaint was not made by this Commission on its own motion, nor was it signed by the mayor of Santa Barbara, or by a majority of the city council, or by twenty-five consumers or purchasers or prospective consumers or purchasers of telephone service. The complaint is signed solely by a rival telephone company, which, in so far as the pleadings show, is not even a patron of the defendant. Complainant relies in this connection on § 62 of the act, providing, in effect, that "any public utility shall have a right to complain on any of the grounds upon which complaints are allowed to be filed by other parties." This provision, however, cannot be regarded as overruling the specific provisions of § 60 with reference to complaints attacking the reasonableness of the rates of the classes of public utilities therein designated.

I am of the opinion, furthermore, that, entirely independent of this ground, this Commission does not have jurisdiction to

grant the relief asked under the first head. The relief asked is that this Commission establish the rates to be charged by defendant in the city of Santa Barbara. The city of Santa Barbara has not voted to confer upon this Commission its powers over public utilities, and accordingly continues to have the right to establish the rate for telephone service rendered within its limits from and to points therein. While it may be a difficult matter to segregate the rates to be charged for service within the city of Santa Barbara as distinguished from the broader area of defendant's Santa Barbara exchange, the relief which complainant had in mind, and which is asked in its complaint, is that this Commission establish the rates charged by defendant "in the city of Santa Barbara." Until the legislature chooses, if it so desires, to enact additional legislation under the provisions of § 23 of article 12 of the Constitution of this state, as amended on November 3, 1914, the Railroad Commission has no jurisdiction to grant this relief.

I turn now to a consideration of the second head of the complaint, referring to alleged discrimination in rates. Complainant asks under this head "that the discriminatory rates of the defendant in the city of Santa Barbara be prohibited." Section 60 of the public utilities act does not apply to the complaint viewed in this aspect, for the reason that the provisions of § 60 with reference to the number of complainants refer only to complaints against the reasonableness of rates, and not to complaints based on alleged discrimination in rates.

Complainant relies, in the first instance, on chapter 276 of the Laws of 1913 (Statutes of 1913, p. 508), generally referred to as the "unfair competition statute." While this statute makes unlawful certain acts which are termed unfair competition and unfair discrimination, this Commission is not the proper forum within which to seek relief under this statute. The act provides that the attorney general of California may prosecute an action in the name of the people of California to annul the charter or revoke the license of a corporation violating the statute, makes contracts in violation of the statute illegal, provides for actions at law to recover damages on behalf of persons, firms, and corporations which may have suffered injury, and declares that persons who violate § 1 of the act shall be guilty of a misdemeanor.

or and punishable by fine or imprisonment. While all these remedies are provided, no remedy before the Railroad Commission is provided, and this Commission has no jurisdiction to entertain proceedings under this statute.

Complainant next relies on §§ 19 and 32 of the public utilities act. Section 19 reads as follows:

"No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person, or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service. The Commission shall have the power to determine any question of fact arising under this section."

Section 32 (a) reads as follows:

"Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that the rates, fares, tolls, rentals, charges, or classifications, or any of them, demanded, observed, charged, or collected by any public utility for any service or product or commodity, or in connection therewith, including the rates or fares for excursion or commutation tickets, or that the rules, regulations, practices, or contracts, or any of them, affecting such rates, fares, tolls, rentals, charges, or classifications, or any of them, are unjust, unreasonable, discriminatory, or preferential, or in anywise in violation of any provision of law, or that such rates, fares, tolls, rentals, charges, or classifications are insufficient, the Commission shall determine the just, reasonable, or sufficient rates, fares, tolls, charges, classifications, rules, regulations, practices, or contracts to be thereafter observed and in force, and shall fix the same by order as hereinafter provided."

Under these sections, this Commission is given jurisdiction to entertain complaints concerning discriminations of the character therein specified, including discriminations between localities. If the Commission finds that discrimination exists, the appropriate relief is an order directing the utility to remove the discrimination. If the discrimination is one affecting rates, it can be removed either by increasing the lower or by decreasing the higher rate. If the localities between which the discrimination

is alleged to exist are cities which have not relinquished to this Commission their power to establish utility rates of the character in question, it seems difficult to understand how this Commission can secure jurisdiction under the head of discrimination. If in a given city the Commission has no power to raise or lower a utility rate, the conclusion would seem inevitably to follow that it has no power to make an order which can be carried into effect only by increasing or lowering that rate. This conclusion was clearly intimated by this Commission in *Pasadena v. Southern California Edison Co.* vol. 1, *Opinions and Orders of the Railroad Commission of California*, p. 801. In the present case, the Commission has no power to establish rates in the city of Santa Barbara, one of the communities concerning which the comparison is made; nor does it have jurisdiction to establish telephone rates in most of the other cities which are referred to in the complaint herein.

Complainant urged at the hearing, and draws attention to the fact in its brief, that the area of defendant's Santa Barbara exchange extends beyond the city limits, so that with reference to conversations between points in the city of Santa Barbara and points in the territory in the exchange outside of the city limits, this Commission has jurisdiction to establish rates. However, this service is relatively unimportant as compared with the service between points within the city, and the prayer of the complaint shows that the real relief which complainant had in mind was either the establishment of rates to be charged "in the city of Santa Barbara," or the indirect accomplishment of the same end by the removal of defendant's alleged discriminatory rates "in the city of Santa Barbara." Until the legislature enacts the necessary additional legislation, if it desires so to do, this Commission is without jurisdiction to grant the relief thus requested.

Certain propositions presented by complainant are clearly indisputable. One of these propositions is that defendant has no right to charge the people of Santa Barbara unreasonably low telephone rates, and then recoup itself for its losses in the Santa Barbara territory by charging people in other communities unreasonably high telephone rates. It is also a well-established principle in public utility regulation, that if a utility voluntarily establishes a rate, this rate must be regarded as *prima facie* rea-

sonable. These principles will undoubtedly have a vital bearing in proceedings which may hereafter be filed before this Commission, but cannot be considered in the present case, for the reason that this Commission is without jurisdiction to give the relief asked.

I recommend that the complaint be dismissed, without prejudice to the right of a proper complainant or complainants to file a new complaint if this Commission should hereafter secure jurisdiction over telephone rates in the city of Santa Barbara.

I submit the following form of order:

ORDER.

A public hearing having been held in the above-entitled proceeding, and briefs having been filed and the case being now ready for decision,—

It is hereby ordered that the complaint be, and the same is hereby, dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

CALIFORNIA RAILROAD COMMISSION.

E. D. PORTER ET AL.

v.

FRESNO CANAL & IRRIGATION COMPANY.

[Decision No. 2121; Case No. 651.]

Service — Irrigation — Private ditches — Control by company.

An irrigation company will not be ordered to take control of a private irrigation ditch and its branches, and to operate and maintain the same, unless it is properly compensated by the landowners benefited thereby.

Service — Irrigation — Private ditches — Maintenance by company — Conditions imposed.

An irrigation company was ordered to assume control and maintenance of irrigation laterals in a certain section formerly controlled and maintained by private landowners, it appearing that public necessity would be best subserved thereby; but such order was made upon condition that an agreement be signed by the owners of 75 per cent of the land affected to pay the actual cost, not exceeding 85 cents per acre for the first two

years, 50 cents during the third and fourth years, and 25 cents during each subsequent year.

[February 3, 1915.]

PROCEEDING to compel an irrigation company to take over and maintain a private irrigation ditch and branches; granted conditionally.

Appearances: E. D. Porter for complainants; W. A. Sutherland for defendant.

REPORT OF THE COMMISSION.

Thelen, Commissioner. This is a complaint to compel Fresno Canal & Irrigation Company to take over the control of certain lateral ditches under its system, and thereafter to maintain and operate the same.

The complaint alleges in effect that complainants are land-owners in sections 33 and 34, township 13 south, range 21 east, M. D. B. and M.; that defendant is a public utility water corporation; that defendant has contracted under certain water-right agreements to deliver water to complainants and that they secure their water from a branch or lateral ditch (known as Temperance Colony ditch) which takes water from defendant's Church ditch at a point in section 35 in said township and range; that complainants all receive water through the Temperance Colony ditch; that there has never been a permanent organization of the water users so as to secure an equitable distribution of the water; that complainants cannot effect such organization, and that they desire that defendant be directed to take over the management and control of the Temperance Colony ditch, and thereafter to make a fair and equitable distribution of the water; that complainants desire that the Railroad Commission make such provision for the payment to the defendant of the expense incurred as may be just and necessary, and that this expense be assessed against the land of all persons having water-right agreements applying to said sections 33 and 34; that complainants ask that defendant be directed to enlarge and repair the Temperance Colony ditch; that as the water is now distributed some persons securing water from this ditch secure more than their share, while others cannot secure enough water to irrigate their crops; and that if defendant is required to take over the management and control of the ditch,

enough water will be supplied to all persons. Complainants ask that this Commission require defendant to take over the management and control of the Temperance Colony ditch, and to make appropriate provision for payment to the defendant for its services.

The answer denies that it is impossible to effect an organization among the landowners themselves for the distribution of the water; alleges that the Temperance Colony ditch has continuously been owned by the landowners and operated by them; alleges that the proper maintenance and control over the Temperance Colony ditch and the distribution of water therefrom would cost at least 75 cents per acre for all the lands entitled to water for irrigation from said ditch, and that a large number of landowners object to the payment of any compensation to defendant for the service requested, and that it would be necessary for defendant to conduct expensive court proceedings to collect such compensation as this Commission might establish for said service. Defendant asks that the complaint be dismissed.

A public hearing was held in Fresno on January 26, 1915.

The evidence shows that complainants receive their water from Fresno Canal & Irrigation Company under certain so-called water-right agreements between the irrigation company and the predecessors of complainants in the ownership of the land in said sections 33 and 34. These lands are located some 6 or 7 miles east of Fresno. The agreement covering section 33 provides that in consideration for the payment of \$3,200, the irrigation company agrees to deliver all the water which may be required, not exceeding at any time 4 cubic feet of water per second for the irrigation of the section. The irrigation company agrees to place a suitable box or gate in the bank of the main canal, or a branch thereof, at the most convenient point for the conveyance of water to the land. The agreement continues in part as follows:

"The party of the second part (the landowner) will construct a ditch from said box or gate to said land, at his own risk, cost, and expense; and it is covenanted and agreed that the ditch so constructed shall be a branch ditch of said company, and be under the control thereof, and that said company shall have the right to use and enlarge said ditch, provided such use shall not interfere with the flow of water to said land; and the party of the second

part hereby grants to the party of the first part the right of way to convey water through any of his lands situate in said township to contiguous lands."

The landowner agrees for himself and all subsequent owners of the land to pay to the irrigation company on the first Monday in September of each year the sum of \$400, which is the equivalent of $62\frac{1}{2}$ cents per acre.

The agreements covering section 34 are substantially similar to the one covering section 33, except that the annual charge is $18\frac{3}{4}$ cents per acre.

Acting under these agreements the irrigation company constructed a box or gate in the bank of its Church ditch in section 35, and the landowners constructed and have continuously maintained and operated the Temperance Colony ditch and all the laterals to reach their respective lands. The cleaning of the various laterals has been left to the individual landowners, and they have distributed the water among themselves as best they could.

The complainants urge that certain of the laterals should be widened and deepened; that a portion of the laterals has not been properly cleaned, and that one central authority should be made responsible for cleaning all the ditches; that a certain waste gate located on a lateral called the "A" ditch has been opened at times to prevent the flooding of lands, and that landowners living beyond have thus been deprived of their water; and that there has been no system in the distribution of the water, with the result that the landowners living near the end of the laterals have received little or no water.

The irrigation company expressed at the hearing a willingness to assume the management and operation of these laterals, but urged that many of the landowners would refuse to pay any compensation for this service, and stated that it was unwilling to do anything unless some means were provided in advance for the payment or compensation for this service, without the necessity of lawsuits to collect from unwilling landowners. It seems that the lands of some of the landowners in these two sections are subirrigated from the irrigation company's canals or from certain laterals, and that these landowners, in a spirit of selfishness,

care not whether the less fortunate owners at a greater distance receive water or not.

Mr. I. Teilman, the irrigation company's general manager, presented an estimate of the cost of placing the Temperance Colony ditch in condition to carry water properly, and of thereafter maintaining and operating the ditch. This estimate is as follows:

Cleaning Ditches.

Enlarging main lateral from main canal to west line of section 35, $1\frac{1}{2}$ miles	\$125 00
Main lateral from west line of section 35, to junction at southeast corner of E. A. Forthcamp's Tract, $\frac{1}{2}$ mile	40.00
Lateral "A" from middle north and south line of section 34, west 1 mile in section 33	75 00
Lateral "B" to northeast corner of C. M. Howard Tract, $\frac{1}{2}$ mile ...	50.00
Lateral "C" to northeast corner of W. J. Woodfin Tract	40.00
Lateral "D" in west half of section 35, to southerly and west to east line of section 34, $\frac{1}{2}$ mile	40.00
	\$370.00

Constructing Structures.

4 cross gates, 6x6x3, at \$30.00	\$120.00
9 side gates, 2x4x2, at \$10.00	90.00
4 side gates, 4x4x3, at \$20.00	80.00
11 cross gates, 4x6x3, at \$28.00	308.00
5 side gates, 4x6x3, at \$20.00	100.00
15 side gates, 2x4x2, at \$10.00	150.00

Mr. Teilman also testified that the present wasteway on the "A" lateral should be removed to the end of the "A" lateral, and then serve both the "A" and the "B" laterals, but made no estimate of the cost, for the reason that the price to be paid for the right of way is uncertain.

On the basis of 1,280 acres to be served, Mr. Teilman estimated a cost of \$1 per acre for the more or less permanent work of cleaning the ditches and building structures, except the wasteway, which cost he distributed over two years. To this cost he added an annual charge of 35 cents per acre for ditch tender, and 15 cents per acre for upkeep after the first two years. He thus estimated a charge of 85 cents per acre for the first two years, and 50 cents per acre for each succeeding year.

C. H. Loveland, one of this Commission's assistant hydraulic engineers, while agreeing in general with Mr. Teilman, estimated a charge which on the basis of 1,280 acres would amount to 95 cents per acre during the first year, 55 cents for the next two years, and 27 cents per year thereafter. This estimate is based

on the assumption that, as the landowners become accustomed to a regular systematic delivery of water, the services of a ditch tender can gradually be eliminated.

I am convinced that in order to secure a proper distribution of water on these sections the changes suggested by these engineers should be made.

This case presents the question whether it is not the duty of Fresno Canal & Irrigation Company, under its water-right agreements, to take control of the privately owned laterals and operate and maintain the same. Whatever decision may ultimately be reached on this point, it is clear that if this duty rests on the irrigation company, the compensation received by the company must be sufficient to cover the service. In the present case the rate of $18\frac{3}{4}$ cents per acre for water in section 34, and the rate of $62\frac{1}{2}$ cents per acre in section 33, are obviously not high enough to include compensation for the additional service now demanded from the irrigation company. Hence in the present case the irrigation company will not be directed to perform this service unless it is properly compensated.

In my opinion, the public interest will be best served by having the irrigation company ultimately operate and maintain all the laterals under its system. It is at times difficult for farmers to induce their neighbors to keep their ditches clean and to permit a fair and equitable distribution of the water. Only too frequently the failure of one farmer to clean his ditches results in suffering to the others, and the action of the consumers near the heads of the laterals frequently results in a failure of the consumers at the ends of the laterals to secure their fair share of the water. All parties concerned—the irrigation company, the consumers, and this Commission—should give serious consideration to this problem, and whatever action is taken in the meantime should be in harmony with the ultimate solution of the problem.

In the present case it appears that a number of landowners do not want the irrigation company to take control of the laterals unless it be done without expense to them, and that they may resist payment. It would be manifestly unfair to direct the irrigation company to perform this work unless there is a reasonable prospect that the company will be paid for it. Hence an order

will issue directing the irrigation company to assume control of the laterals and thereafter to maintain and operate them, but only when complainants shall have presented an agreement signed by the owners of 75 per cent of the 1,280 acres of land affected, agreeing to pay the actual cost, not to exceed 85 cents per acre for the first two years, 50 cents during the third and fourth years, and 25 cents during each subsequent year, and when the Commission has issued a supplemental order to this effect.

Whatever may be done in the present case, the complainants will have the satisfaction of knowing that they have helped to advance materially the ultimate solution of this problem.

I submit the following form of order:

ORDER.

A public hearing having been held in the above-entitled case, and the matter being now ready for decision,—

It is hereby ordered that Fresno Canal & Irrigation Company be, and the same is hereby, directed to take control of the Temperance Colony ditch and its branches, and to operate and maintain the same, and in connection therewith to build the structures and perform the work testified to by Mr. I. Teilman, as set forth in the opinion which preceded this order, other than the construction of the wasteway, and to collect therefor the actual cost, not to exceed 85 cents per acre during the first two years, 50 cents per acre during the third and fourth years, and 25 cents per acre annually thereafter;

Provided, however, that this order shall not become effective until complainants shall have filed with the Railroad Commission an agreement signed by the owners of 75 per cent of the 1,280 acres affected, agreeing to pay to Fresno Canal & Irrigation Company the compensation hereinbefore set forth, and until the Railroad Commission has issued a supplemental order specifying that such agreement, satisfactory to the Commission, has been filed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

CALIFORNIA RAILROAD COMMISSION.

CHARLES E. WARREN AND HERBERT PASH

v.

PACIFIC GAS & ELECTRIC COMPANY.

[Case No. 727; Decision No. 2123.]

Service — Extension of lines — Apportionment of cost.

The construction necessary for the extension of the lines of a gas and electric company to certain consumers was apportioned between the company and the consumers, and the company was ordered to complete its portion thereof within twenty days after completion by the consumers, where it appeared, after consideration of the costs of extending such service and probable revenue therefrom, that it would be unreasonable to require the company to extend the service entirely at its own expense.

Service — Extension of lines — Incomplete evidence.

An application to require a gas and electric company to extend its service to certain consumers at its own expense was of necessity considered primarily as an individual local problem, owing to the fact that the evidence submitted was confined to the costs of, and probable revenue from, the particular extension.

[February 3, 1915.]

PROCEEDING to compel extension of service.

Appearances: Charles E. Warren and Herbert Pash *in propria persona*; Charles P. Cutten for defendant.

REPORT OF THE COMMISSION.

Thelen, Commissioner: This is a complaint by Charles E. Warren and Herbert Pash, of Cupertino, against the Pacific Gas & Electric Company, alleging that defendant refuses to extend its lines and provide the necessary facilities to serve complainants with electric energy for lighting and power purposes.

The subject-matter of the present complaint was taken up informally with the Commission on May 5, 1914, at which time Mr. Warren reported that the company had refused to supply him with electric service unless he advanced the sum of \$900, and also that the company had demanded from Mr. Pash an advance

payment of \$629.10 before extending its lines to the points where electric energy is to be utilized on the Pash property. These advance payments were to be refunded to Mr. Warren and Mr. Pash annually on the basis of 20 per cent of the sum of all payments made by them to the company during the year.

From evidence introduced at the hearing, the facts appear to be as follows:

Both complainants, Charles E. Warren and Herbert Pash, are orchardists, owning separate orchard properties and residing on the east side of Stevens creek adjacent to the Homestead road near Cupertino.

Charles E. Warren desires electric service for lights and a small motor for domestic pumping at his residence, which is situated about 300 feet south of a point on Homestead road, approximately 600 feet east of Stevens creek. This complainant also desires electric service for a 20 horse-power motor for irrigation pumping, which motor is to be installed at a point on the east side of Stevens creek, about 2,000 feet south of Homestead road.

Herbert Pash, in addition to requiring lights in his residence and other buildings situated some 500 feet north of a point on Homestead road, about 600 feet east of Stevens creek, desires electric service for a 20 horse-power motor to be used for irrigation pumping purposes. For a portion of each season the 20 horse-power motor above referred to will be located at a point on Stevens creek immediately north of the Homestead road, and at other times will be located at a well some 600 feet east of Stevens creek, north of and adjacent to the Homestead road. Provision for a change in the location of the motor and pumping installation on the Pash property is made necessary because of the fact that ordinarily there will be water in Stevens creek only during the early part of the irrigating season, which necessitates considerable pumping from the well above referred to.

In the latter part of 1913 complainants applied to defendant for electric service of the character mentioned, but notwithstanding the fact that defendant did not at that time refuse to extend its lines to complainants' premises, the lines of defendant were

not constructed, and complainants were without electric service of any character at the beginning of the irrigating season of 1914. Fearing that electric energy would not be available for irrigation early enough in 1914 to enable complainants to do the necessary irrigating, both Mr. Warren and Mr. Pash purchased and installed gasolene engines to operate their pumps, which engines have been used by them since early in 1914. Subsequently complainants renewed their request to defendant for electric service, and defendant refused to extend its lines and supply said service except upon condition that Mr. Warren advance the sum of \$900, or Mr. Pash advance the sum of \$629.10, which amounts defendant agreed to refund to complainants on the basis of 20 per cent of the gross annual payments made by them for the service furnished. Complainants refused to accept service on the basis proposed by defendant, and on May 5, 1914, Mr. Warren filed an informal complaint requesting that the Commission require defendant to extend its lines and to supply them with electric service.

An investigation of the complaint was subsequently made by Mr. L. S. Ready, one of the Commission's assistant electrical engineers, who recommended a basis for adjustment of the matter, which recommendation contemplated the construction by Mr. Warren and Mr. Pash at their own expense of lines located entirely upon their respective properties, and the construction by and at the expense of the company of all the lines on public highways in addition to furnishing and installing the necessary transformers and meters. Mr. Ready's suggestion was accepted by the defendant, but complainants desired to have the Commission rule formally upon the matter, and filed their complaint in this case.

Defendant has heretofore constructed an extension from its 11,000 volt line on Saratoga road westerly along Homestead road to a point approximately $\frac{1}{10}$ of a mile east of the intersection of the private roads leading to complainants' residences, with Homestead road and about 1 mile east of the Homestead road bridge over Stevens creek.

The cost of supplying service to complainants is estimated by defendant as follows:

Extension of 11,000 volt line on Homestead road (approximately $\frac{1}{10}$ mile)	\$629.10
Tap lines:	
Charles E. Warren, residence, 300 feet	\$58.50
Charles E. Warren, power 2,500 feet	258.30
Herbert Pash, residence, 500 feet	55.30
Herbert Pash, power (no extension)	
	372.10
Transformers and meters:	
Charles E. Warren, residence	\$17.25
Charles E. Warren, power	241.95
Herbert Pash, residence	6.50
Herbert Pash, power	300.40
	566.10
Total estimated cost	\$1,567.30

The annual revenue as estimated by defendant is as follows:

Charles E. Warren, residence	\$42.00	
Charles E. Warren, power	120.00	
		\$162.00
Herbert Pash, residence	\$12.00	
Herbert Pash, power	120.00	
		132.00
Total estimated revenue		\$294.00

From the facts as above stated it will be evident that when application was first made for service by complainants, defendant demanded that the cost of the extension, not including transformers and meters, be advanced before service would be supplied. Subsequently defendant agreed to construct lines and furnish the transformers and meters, necessary to serve complainants, at an estimated cost of \$1,195.20, provided complainants would advance the cost of tap lines estimated to cost \$372.10.

From an investigation of the estimates submitted by Mr. Ready, it appears that in accordance with the following recommendations the cost to be borne by the company of the main extension, transformer switches, transformers and meters installed, and secondary extension along the public road to serve the complainants, will be approximately as follows:

Main extension	\$599.70
Transformers and meters	562.90
Transformer switches	40.00
Secondary extension along road	105.70
Labor of installing transformers, transformer switches and meters	78.50
	\$1,386.80

The extensions across private property as estimated by Mr. Ready were:

Charles E. Warren, 20 horsepower pump	\$262.70
Charles E. Warren, house	28.60
Herbert Pash, house	52.00

From this should be deducted the cost of the transformer switch used for Mr. Warren's plant, and cost of installing transformers and switch, which have been included in the above. The revised estimate of this cost is:

Extension to Charles E. Warren, 20 horse-power pump	\$210.60
Extension to Charles E. Warren, residence	28.60
Extension to Herbert Pash, residence	52.00
	\$291.20

Mr. Ready's estimate of probable annual revenue is as follows:

Charles E. Warren, residence	\$48.00
Charles E. Warren, power	120.00
Herbert Pash, residence	15.00
Herbert Pash, power	180.00
Total annual revenue	\$363.00

Reference was made at the hearing to alleged discriminatory practices of defendant in extending its lines and providing the necessary facilities for furnishing electric service in the San Jose district, but inasmuch as this matter, in so far as the territory involved in this case is concerned, is now before the Commission in connection with cases No. 477 and No. 550, it will not be necessary to consider it separately in this proceeding. It may be well, also, to mention the fact that the Commission, in connection with case No. 683, has now under investigation the general question of deposits and advance payments to secure service, as well as all other forms of deposits and guaranties demanded by electric and certain other public-utility corporations in California.

In view of the facts in connection with this particular case and considering the local conditions only, it would appear that the investment necessary to serve complainants with electric energy from defendant's present 11,000 volt distribution lines on Homestead road would not be immediately profitable if the entire expense were borne by defendant. On the other hand, it may be that the estimates of probable revenue are too low, and it may also be possible that defendant's revenue as a whole from this class of service in the territory under consideration would fully justify an order directing defendant to furnish the necessary facilities and to supply electric service to complainants without

any additional expense to that contemplated in the rates of defendant as filed with the Commission. Owing to the fact, however, that the evidence in this case is confined to a certain proposed extension of defendant's present 11,000 volt lines on Homestead road and the furnishing of service from that source, I have considered the matter primarily as an individual local problem. From this point of view it appears that complainants should each bear a portion of the expense involved in extending the necessary lines and providing the necessary facilities to supply electric energy to the points on their respective properties where the service is to be utilized.

After a careful consideration of the evidence as presented, I find as a fact that complainants are entitled to receive service from defendant, and that defendant should construct the necessary line, supply and install the necessary facilities and connections, and furnish electric energy to complainants, under the conditions which are specified in the order herein.

I submit the following form of order:

ORDER.

A public hearing having been held in the above-entitled proceeding, and the case having been submitted and now being ready for decision, and the Commission finding that the directions herein given are just and reasonable,

It is hereby ordered that Pacific Gas & Electric Company, within twenty days after the completion by complainants of the construction to be done by them as hereinafter indicated, extend its 11,000 volt distribution line along Homestead road to a point half way between the two proposed pumping plants of Mr. Herbert Pash: construct all necessary primary and secondary extensions required to serve the two pumping installations of Mr. Herbert Pash and connect its lines to the primary and secondary extensions to be constructed by the complainants as hereinafter indicated; furnish and install all transformers, transformer switches, and meters required; install the transformer switch used in connection with the Charles E. Warren pumping plant so that the primary extension across Mr. Warren's private property may be disconnected from the company's lines when the

plant is not in operation; and thereafter supply electric energy to complainants, subject to the following conditions precedent:

1. That Mr. Charles E. Warren shall construct or cause to be constructed all necessary primary and secondary line extensions required to connect his pumping plant and residence service to a point within one span of the proposed extension of defendant's lines.

2. That Mr. Herbert Pash construct or cause to be constructed the secondary line extension across his private property, required in addition to that necessary to serve his residence were it located adjacent to the Homestead road.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

CONNECTICUT PUBLIC UTILITIES COMMISSION.

IN RE TROLLEYMEN'S STATE CONFERENCE BOARD.

[Docket No. 733.]

Service — Street car vestibules — Jurisdiction.

The Commission has jurisdiction over a petition of the Trolley-men's State Conference Board for an order requiring the equipment of all street railway cars with vestibules and the heating of vestibules of closed cars in winter.

Service — Equipment — Vestibules — Employees' comfort.

Street car companies were not required to equip their cars with vestibules or wind shields where it appeared that such equipment was not so much for the safety of the public or of the employees as for the comfort of the employees, and that the cost of installation would be considerable.

Service — Equipment — Heaters — Employees' comfort.

Street car companies were not required to install in their cars vestibule heaters for winter use, where it appeared that such equipment would not be so much for the health of the employees as for their comfort, and that in addition to the cost of installation and maintenance, the amount of current required and additional operating cost on account of extra power consumed would be considerable.

Service — Equipment — Cost — Safety.

The expense alone of installing vestibules and heaters in street cars will not be controlling upon the Commission, if there is also involved a question of public safety.

[February 9, 1915.]

PETITION for an order requiring the equipment of street railway cars with vestibules and the heating of vestibules of closed cars in winter; denied.

By the **Commission**: On April 12, 1913, the following petition was received by the Commission:

To the Honorable Public Utilities Commission:—

The Petition of the Trolley-men's State Conference Board for Improvements for the Safety of the Public and Employees of Street Railways.

Your petitioners respectfully represent that certain cars including work, sand, and express cars, and certain open cars, so-called, used on street railways in the state of Connecticut, are not equipped with vestibules, and that the vestibules of certain cars on said street railways are not heated in cold weather, and that said conditions are a menace to the safety and health of the public and of the employees of said companies. Your petitioners, therefore, respectfully request your Honorable Board to order that all cars used on the street railways in this state, including work, sand, and express cars, and open passenger cars, be equipped with vestibules, and that the vestibules of all closed cars including work, sand, and express cars be heated in the same manner and to the same extent as passenger cars are heated.

Dated at Hartford this 12 day of April, 1913.

Signed John P. Murphy,
Chairman.

The foregoing petition was duly assigned, for hearing at the office of the Commission on Monday, May 5, 1913, at 11:15 o'clock in the forenoon, of which assignment all parties in interest had due and legal notice, and at which hearing and at an adjournment thereof on May 29, 1913, at 11:30 o'clock in the forenoon, at the same place, the parties appeared and were fully heard.

Section 3869 of the General Statutes provides that the Commission may require vestibules on street railway cars when deemed necessary in the interests of the public or of the employees concerned. Sections 14 and 15 of chapter 128 of the Public Acts of 1911 provide that on written complaint of any defects in any portion of the plant or equipment of a public-

service company, or of the manner of operating such plant by reason of which public safety or the health or safety of employees is endangered, the Commission shall fix a time and place for hearing and, if, upon such hearing the Commission finds the conditions complained of to be dangerous to public safety or the safety of employees, it shall make such order as may be necessary to remedy same. These statutes give the Commission jurisdiction over the matter complained of.

This complaint is brought principally upon the grounds of public safety and the health and safety of the street railway employees. The chief contention of the complainants was that the lack of proper protection of the motorman from storms and dust, and his consequent inability to keep his eyes open and be alert, increased the danger of accidents, and that the unheated vestibule, as well as exposure from lack of storm protection, was a menace to the motorman's health. Representatives of the street railway companies asserted that the risk of accident arising from the absence of wind shields was more theoretical than real, since practically no accidents had ever happened attributable to such cause. The other claims of the respective parties will be considered briefly in the discussion of the Commission's view of this matter.

This request, so far as it relates to vestibules, is similar to one presented to the Railroad Commissioners of this state, in April, 1909, and which was determined by them in an opinion and finding of which the following extract comprises the more important features:

"The whole question of vestibuling cars was ably and exhaustively presented by the petitioners and the street railway companies. Many witnesses connected with the operation and supervision of street railways (both in Connecticut and other states), and many representing the traveling public, were heard.

"We therefore take occasion to state the position which this Board takes at this time on the whole question of vestibuling cars, and to modify or revoke our numerous previous orders relating to vestibuling cars, and to substitute therefor an order on vestibuling, which is applicable to all street railways operating cars in this state and to cover their operation at all seasons of the year.

"We find that by the operation of orders previously issued and by the acts of the street railway companies in providing their equipment, there are now in use in this state 950 closed cars of which 923 are provided with vestibules, but 185 of said cars are provided with what is known as the semi or bulkhead vestibule only.

"The two chief uses of the vestibule are the protection of the operators of the cars from cold and from storms. The operators, themselves, make a third claim; namely, protection from dust, cinders, and other objects in the open air.

"We find that the open car is provided as additional equipment by the railway companies to meet the demands of its patrons, and should be used only in the warm season of the year and on pleasant days in that season. We think that the traveling public demands that cars operated at such times should be in reality as open as it is possible to have them. We believe that the motor-man operating the car can protect himself or be protected by the various simple devices now in use (such as glasses, storm coats, etc.) from the occasional short storms that occur in the summer months; that in severe or prolonged storms in said season the closed cars should be substituted for the open cars.

"Much testimony was heard, tending to show the danger incident to operating cars in storms, and the need of the operator having an unobstructed view.

"The testimony of witnesses and our inquiries fail to show any state where, by statute or orders of railroad commissioners, open cars used in summer months are required to be vestibuled.

"Therefore we deem it necessary in the interest of the public and of the employees concerned, and do order and direct each and every company operating a street railway within the limits of the state of Connecticut to fully inclose the platforms of all so-called closed cars to be used in the transportation of passengers, with the complete vestibules. And that all cars used by said street railway companies for the transportation of passengers between the 1st day of November (beginning in the year 1909) and the 30th day of April, inclusive, of each year, be thus fully vestibuled, excepting from the provisions of this order cars used in an emergency or on such warm, clear days in April and November as are suitable for the use of open cars."

The foregoing report and order were issued after careful consideration of practically the same facts which are now before this Commission, and it is the opinion of this Commission that the situation to-day, so far as relates to vestibules or wind shields, is as well met by the foregoing order as it would be by any more comprehensive order which we might issue. It does not appear from the testimony that the cars would be operated any more safely with wind shields than without them; on the contrary, it was shown that on cars with closed vestibules operated in severe rain storms it was the practice, encouraged by the companies and adopted by the motormen, to lower the front windows to secure clearer vision ahead. No instances were cited of accidents occurring due to dust, rain, or other obstruction of the motorman's sight which vestibules such as those prayed for would have prevented.

The question, therefore, appears to be one not so much of safety of the public or of the car employees, as it is a question of the comfort of these employees. Complaint was made by petitioners that in sudden rain storms in summer motormen were frequently unable to be prepared with protecting coats and hats, and that they were frequently forced to travel long distances in wet clothing. The lack of heat in vestibules in winter was another source of discomfort and alleged endangering of health. To these and similar statements the answer of the companies was that motormen were no more exposed than drivers of other vehicles, and that even if their occupation did subject them to certain uncomfortable and disagreeable experiences, such incidents of their employment might reasonably be anticipated when the work was undertaken.

The cost of reconstructing cars according to the desires of the petitioners was testified to be between \$100 and \$200 each, according to the type of car. For the Connecticut Company alone this expense was estimated at about \$150,000 for the number of cars which would have to be altered. As for the vestibule heaters in winter it was shown that, in addition to the cost of installation and maintenance, the amount of current required and additional operating cost of the cars on account of extra power consumed would be considerable, and that even then the anticipated benefits would hardly be realized.

While the question of expense alone would not be controlling if there were also involved a question of safety, still the cost of the work becomes an important argument against granting the petition when it is considered that the safety of the public and of the employees would probably be increased little or none, and the comfort of the motormen would not be proportionately bettered.

The foregoing view of the matter was taken by the Commission at the completion of the hearings and investigation held shortly after the presentation of this petition, and a denial of said petition was decided upon. There were, however, at that time similar petitions pending in other states, and before issuing a final order it was thought advisable to defer formal action pending determination of similar petitions and further investigation and observation by the Commission, in order that if any new reasons should appear for granting the request of the petitioners, advantage might be taken thereof. No such reasons have appeared, however, and on consideration of the foregoing facts the petition is therefore denied.

We hereby determine and direct that notice of the foregoing finding and decree be given to the petitioners and to each street railway company operating in the state of Connecticut, by Henry F. Billings, secretary of this Commission, by forwarding by registered mail true and attested copies hereof addressed one to J. P. Murphy, Chairman of the Trolley-men's State Conference Board for Improvements for the Safety of the Public and Employees of Street Railways, c/o the Connecticut Company, Hartford, Connecticut, and one each to the Bridgeport & Danbury Electric Railway Company, Danbury, Connecticut; the Bristol & Plainville Tramway Company, Bristol, Connecticut; the Connecticut Company, New Haven, Connecticut; the Danbury & Bethel Street Railway Company, Danbury, Connecticut; the Groton & Stonington Street Railway Company, Norwich, Connecticut; the Hartford & Springfield Street Railway Company, Warehouse Point, Connecticut; the New London & East Lyme Street Railway Company, Norwich, Connecticut; the New York & Stamford Street Railway Company, Portchester, New York; the Norwich & Westerly Traction Company, Norwich, Connecticut; the Rhode Island Company, Providence, Rhode Island; the Shore Line Electric Railway Company, Norwich, Connecticut; the Water-

bury & Milldale Tramway Company, Waterbury, Connecticut,—on or before the 9th day of February, 1915, and due return make hereon.

Public Utilities Commission, Richard T. Higgins, T. B. Ford, J. H. Hale.

IDAHO PUBLIC UTILITIES COMMISSION.

IN RE CHICAGO, MILWAUKEE, & ST. PAUL RAILWAY COMPANY.

[Case No. 95; Order No. 203.]

Freight rates — Excessive — Waiver — Discrimination.

A railroad company was authorized to waive the difference between freight charges assessed by it on certain shipments of cedar trees based on local rates then in effect, and the charges that would have applied under rates authorized by the Commission to take effect shortly thereafter, where it appeared that the shipper understood that the latter rates were in effect at the time of the shipment, that the rates charged were excessive, and that no discrimination would result inasmuch as no other shipments of the same class had been made over the railroad during the period that negotiations were carried on relating to the shipment.

[February 11, 1915.]

APPLICATION to be allowed to waive excessive freight charges; granted.

By the **Commission**: On the 8th day of February, 1915, the Chicago, Milwaukee, & St. Paul Railway Company, through its general freight agent, F. D. Burroughs, made application to the Public Utilities Commission of the State of Idaho for an order of the Commission permitting the said railway company to waive collection from the E. T. Chapin Company, of Bovill, Idaho, of a portion of the charges assessed by the said railway company on two shipments of cedar trees from Elk River to said E. T. Chapin Company at Bovill, Idaho, in the sum of \$67.23.

The petition sets forth that on October 6, 1914, they transported three carloads of cedar trees from Elk River to Bovill,

Idaho, consigned by the Potlatch Lumber Company to the E. T. Chapin Company, of a total weight of 151,900 pounds for the sum of \$60.76, based on local rate of 4 cents per cwt.;

And again on October 12, 1914, transported three more cars from the same consignor to the same consignee, total weight 129,300 pounds—charges \$51.72—based on the same local rate;

That on November 6, 1914, the Public Utilities Commission of the State of Idaho authorized said railroad company, to become effective November 7, 1914, to charge rates on cedar trees from Elk River to Bovill, Idaho, as follows:

In single carloads	per 1,000 lineal feet—	\$2.86
In double “ “	“ “ “ “	3.08
In triple “ “	“ “ “ “	3.48

—that these rates were published and are now carried in P. U. C. I. No. 143;

That for some time prior to the date of said shipments, negotiations had been carried on by the said railway company with the said E. T. Chapin Company for the transportation of said shipments of cedar trees, and at the time the said shipments were made, it was the shipper's understanding that the rates as set forth in the said P. U. C. I. No. 143 were in effect, and that the consignee would receive the benefit of the said rates;

That the said railway company admits the unreasonableness of the rates as assessed on the local rate of 4 cents per cwt.;

That the charges so assessed have not been paid, owing to the fact that consignee has protested payment;

That the shipment of October 6, above referred to, was a triple load movement in cars of applicant numbered 61,315—61,453—61,837, a total of 6,454 lineal ft., and the said shipment of October 12, 1914, was also a triple load movement in applicant's cars numbered 60,105—61,333—61,941, a total of 6,552 lineal ft.;

That under P. U. C. I. No. 143 the charges to be assessed would be as follows:

On shipment October 6, 1914	.....	\$22.45
On “ “ “ 12, “	.....	22.80

This application is accompanied by copies of the original bills of lading, also waybills accompanying the original shipments,

which said documents confirm the statements contained in the application as to the basis on which the charges were assessed and collected on the said shipments.

Now on this 11th day of February, 1915, the Commission having duly considered the application of the said Chicago, Milwaukee, & St. Paul Railway Company for permission to waive the collection of said amount of \$67.23 as hereinbefore stated, and it appearing to the Commission that the charges as actually charged and assessed were as follows:

Shipment October 6, 1914, a triple load movement in applicant's cars Nos. 61,315—61,453—61,837—151,900 lb @ 4¢ per cwt.	\$60.76
Shipment October 12, 1914, a triple load movement in applicant's cars 60,105—61,333—61,941—129,300 lb @ 4¢ per cwt.	51.72

—and that said charges were excessive and contrary to consignee's understanding as to what the charges would be;

And it appearing that the charges on the said shipments, if assessed on the rates as shown in applicant's P. U. C. I. No. 143, would be as follows:

Shipment October 6, 1914, a triple load movement in applicant's cars Nos. 61,315—61,453—61,837, a total of 6,454 lineal ft. @ \$3.48 per 1,000 lineal feet	\$22.45
Shipment October 12, 1914, a triple load movement in applicant's cars Nos. 60,105—61,333—61,941, a total of 6,552 lineal feet @ \$3.48 per 1,000 lineal feet	22.80

And it appearing that the difference in the amounts as charged and the amounts as calculated under applicant's P. U. C. I. No. 143 is \$67.23;

And it further appearing to the Commission, from representations of said railway company, that no shipments of the same class other than those above mentioned and described were transported over its lines during the period that negotiations with the said E. T. Chapin Company were carried on, that no discrimination will result in permitting said waiver of collection to be made by said railway company;

It is, therefore, ordered, that the Chicago, Milwaukee, & St. Paul Railway Company be, and it is hereby, authorized and permitted to waive the collection from the said E. T. Chapin Company, of Bovill, Idaho, a portion of the said charges heretofore assessed against the said E. T. Chapin Company, in the sum of \$67.23.

ILLINOIS PUBLIC UTILITIES COMMISSION.

W. M. LOWREY ET AL.

v.

CLEVELAND, CINCINNATI, CHICAGO, & ST. LOUIS
RAILWAY.

[No. 2524.]

Service — Steam railroads — Seats for passengers.

A steam railroad company should provide sufficient equipment to handle all passengers and to provide them with seats regardless of distance traveled.

Service — Railroads — Passenger trains.

A railroad company providing three trains a day, each way, between certain points, should be satisfactory to patrons of smaller towns and villages along its lines, especially where the company has been providing an additional train at a loss.

Service — Railroads — Passenger train — Discontinuance upheld.

The Commission refuses to order a railroad company to reinstate a fourth passenger train each way between two points on its line, although the discontinued train has been in operation for ten years; it appearing that the curtailed service was better than that provided by other railroads, and that the additional service could only be furnished at a loss to the company.

[February 4, 1915.]⁶

PROCEEDING to compel the reinstatement of a passenger train; petition dismissed.

By the **Commission**: This proceeding is the result of a complaint filed by the citizens of Le Roy, Illinois, also intervening petitions of the citizens of Mahomet, Mansfield, Farmer City, Harris, Ford Woods, Empire, Downs, also the Commercial Club of Bloomington, and various representative councils of the Travelers Protective Association, all of which are located upon or adjacent to the line of respondent company between the cities of Urbana and Bloomington, Illinois. The Commission, having heard all of the testimony and carefully considering all of the facts pertinent thereto, finds:

That prior to April 19, 1914, respondent company operated on week days four trains each way between Urbana and Peoria, Illinois, known as trains No. (eastbound) 4, 16, 18, and 44,

(westbound) 5, 9, 41, and 43, and on Sundays two trains each way, known as trains No. 18 and 44 eastbound and 41 and 43 westbound, the latter being operated as through trains from and to Indianapolis, at which point connections were made with the through trains operating over the main lines of the respondent company, destined to and arriving from the various large terminals of that carrier, being operated under a schedule approximately as shown below:

Westbound.					Station.	Eastbound.						
Train Number.						Train Number.						
41	9	43	5				16	18	4	44		
P.M.	A.M.	A.M.	A.M.	Miles	Lv.	Urbana	Ar.	Miles	A.M.	P.M.	P.M.	P.M.
3:38	11:27	4:13	7:03	00.0	Ar.	LeRoy	Ar.	95.2	10:44	1:57	7:32	11:23
4:45	12:29	5:26	8:16	34.3	Ar.	Bl—tn.	Ar.	60.9	9:37	12:58	6:22	10:14
5:13	1:02	5:55	8:45	50.6	Ar.	Peoria	Lv.	44.6	9:05	12:30	5:50	9:45
6:55	2:45	7:45	10:30	95.2				00.0	7:25	11:00	4:05	8:00

That upon April 19, 1914, respondent company abandoned the operation of trains No. 4 and 5 between Peoria and Urbana, Illinois, thereby effective a schedule between Peoria and Urbana approximately as shown below:

Westbound				Station.			Eastbound			
Train Number.							Train Number.			
41	9	43						16	18	44
P.M.	A.M.	A.M.	Miles	Lv.	Urbana	Ar.	Miles	A.M.	P.M.	P.M.
3:38	11:27	4:33	00.0	Ar.	LeRoy	Ar.	92.5	10:45	2:28	11:10
4:45	12:35	5:50	34.3	Ar.	Bl—tn	Ar.	60.9	9:37	1:31	9:52
5:13	1:05	6:25	50.6	Ar.	Peoria	Ar.	44.6	9:05	1:05	9:15
6:55	2:55	8:15	95.2	Ar.		Lv.	00.0	7:25	11:30	7:15

That the only protests received were from patrons located between Urbana and Bloomington, a distance of 50.6 miles, the original complaint having been received as above stated from the citizens of Le Roy.

From the record it appears that the trains discontinued have been in operation about ten years prior to the date of discontinuance, and that the patrons of respondent company at the various stations had grown used to the convenient hours at which these trains were operated, and apparently have found it quite difficult to accustom themselves to the new schedule.

Prior to April 19, 1914, train No. 5, running west from Urbana, was due to depart from Le Roy at 8:16 A. M. and due to arrive at Bloomington 8:45 A. M., thereby enabling the business man, shopper, or pleasure seeker to spend the entire day in

Bloomington and to depart from Bloomington at 5:50 P. M. on train No. 4, running east from Peoria and due to arrive at Le Roy 6:22 P. M. Under the present schedule citizens of Le Roy desiring to reach Bloomington in the morning are compelled to depart from Le Roy at 5:50 A. M., arriving Bloomington at about 6:25 A. M., which for the farmer or rural resident necessitates quite an early hour for this patron to drive or walk into the said town of Le Roy to make this train. If the patron does not desire to leave Le Roy upon the early morning train the next train leaving Le Roy for Bloomington is known as No. 9, which is due to depart from Le Roy at 12:35 noon, arriving Bloomington at about 1:05 P. M. Upon the return trip if the patron desires to spend the entire day in Bloomington he cannot leave until the arrival of train No. 44, which is scheduled to depart from Bloomington at 9:15 P. M. and is due Le Roy at 9:52 P. M., which is approximately three hours and one half later than the scheduled time of discontinued train No. 4. There is a train, however, known as No. 18, departing from Bloomington at 1:05 P. M. and arriving Le Roy at 1:31 P. M., which gives the patron at least four hours' time in which to transact his business at Bloomington.

The record shows similar testimony of each witness for the complainant, which testimony purports to show practically every train operated by respondent company between the cities of Urbana and Bloomington to be filled with passengers, and that almost every day some passengers are compelled to stand, particularly those using train No. 44, departing from Bloomington at 9:15 P. M. It must be taken into consideration that upon this point respondent company should provide sufficient equipment to handle all of the passengers, and to provide for them seats regardless of the distance traveled.

From a comparative statement of freight and passenger earnings January, 1914, to September, 1914, inclusive, as filed by respondent, showing the revenues of 1914 as compared with those of 1913, the various stations included on what is known as the Peoria division, show a total freight revenue of \$1,050,844.99 for 1913 and \$841,973.01 for 1914, which is a decrease of \$208,871.98 or 19.8 per cent, while on the passenger traffic their 1913 earnings are shown to be \$542,582.30 or 6.7 per cent. This condition is not restricted to the Peoria division of the respondent

company alone, but their annual report to this Commission for the entire line of respondent company shows a general decrease in earnings, and where mention is made of the fact that serious losses were sustained by the floods, it should be taken into consideration that this further handicapped the carriers, as the Peoria and eastern division lay in its direct path.

In reviewing another statement filed by respondent company, captioned, "Local Ticket Sales at Stations on the Third District (Urbana to Peoria Inclusive) during the Months January, 1914, to September, 1914, Inclusive," it appears that the revenue received at Le Roy station has remained practically the same throughout the entire period, and further shows very little variation since the removal of the train; the following figures being given:

January	\$1,386.45	April	\$ 999.89	July	\$1,198.53
February	1,023.43	May	1,049.30	August	1,868.47
March	1,379.79	June	1,034.68	September ...	1,235.61

with an average of \$1,241.90 per month. It must also be noted that the revenue derived at the station of Le Roy during the months of July, August, and September exceeded that of the months February, April, May, and June, and that the revenue derived during the month of August exceeded by practically \$500 the revenue derived during the months of January and March, and by six or eight hundred dollars the other months as shown. Many reasons could be given for this showing, but from the testimony as taken it is apparent that this travel was mostly local.

The record further shows that during the years 1913 and 1914 the passenger trains operated on the division earned for the company 74½ cents per train mile, which is practically substantiated by the revenue statements as filed, and the average cost of operation per train mile was approximately \$1.54, which conclusively shows that the respondent company has been performing a service for the patrons at a loss, and from a careful perusal of the schedules it is the opinion of this Commission that the respondent company, in providing three trains a day each way between the cities of Urbana and Bloomington, Illinois, is performing a service which should be satisfactory to all of the patrons at the smaller towns and villages along its line, as its schedules denote better and more satisfactory service than the

service received at other towns and villages within the state of Illinois as offered by other common carriers, particularly those upon a branch line of a railroad, and that during this period of inactivity of all business the respondent company should not be compelled to reinstate said discontinued train service.

It is therefore ordered by the State Public Utilities Commission that the petition herein be dismissed.

TEXAS RAILROAD COMMISSION.

IN RE AMENDMENT TO COMMODITY TARIFF No. 31-A.

[Circular No. 4724.]

Rates — Railroads — Fruits, melons, vegetables.

Freight rates on fruits, melons, and vegetables transported in small quantities over any single railroad line to points of concentration from points distant 50 miles or less were reduced to 5c per 100 pounds, to induce concentration for reshipment in carload lots; it being provided, however, that reshipment from points on certain specified railroad lines shall be made over the respective lines of the first movement.

[February 6, 1915.]

APPLICATION to reduce rates of certain commodities: granted.

By the **Commission**: In approval of application No. 1212 of the Missouri, Kansas, & Texas Railway Company of Texas, it is hereby ordered by the Railroad Commission of Texas that Commodity Tariff No. 31-A issued by this Commission to apply on fruits, melons, and vegetables, and effective March 10, 1899, be amended by changing item 3, § 4 of tariff so as to hereafter read as follows:

"3. For the purpose of concentrating fruits, melons, and vegetables in order to make up car-load lots of such commodities for reshipment, the rate on any single line of railroad for the transportation of fruits, melons, and vegetables, in small quantities, to points of concentration from points distant 50 miles or less, shall be 5 cents per 100 pounds; provided that when reshipped in car-load lots from concentrating points on the International & Great Northern Railway; St. Louis Southwestern Railway of Texas; Missouri, Kansas, & Texas Railway of Texas; Houston

& Texas Central Railroad; Houston, East, & West Texas Railway; and Texas & New Orleans Railroad, such reshipments shall be made over the respective lines of the first movement."

Effective February 10, 1915. Allison Mayfield, Chairman; Earle B. Mayfield, Commissioner.

CALIFORNIA RAILROAD COMMISSION.

IN RE APPLICATION OF PACIFIC GAS & ELECTRIC COMPANY.

[Decision No. 2066; Application No. 1379.]

Service — Profitable and unprofitable extensions.

It is unnecessary that extensions of service shall be uniformly profitable, or that there shall be no unprofitable extensions.

Service — Extensions — Approval of contract therefor.

An extension of service contract between a gas and electric company and certain prospective customers, by which the company and the customers each agree to construct a portion of the lines, the customers guarantying a yearly minimum return, was approved until such time as the cost and conditions of the service should be investigated by the Commission.

[January 13, 1915.]

APPLICATION for approval of contract between a gas and electric company, and certain of its customers, for an extension of service; granted.

REPORT OF THE COMMISSION.

Thelen, Commissioner: This is an application by Pacific Gas & Electric Company for an order approving a certain contract which contains terms and conditions not in accordance with the rates, rules, and regulations of Pacific Gas & Electric Company now on file with this Commission.

On July 3, 1914, petitioner entered into a contract with J. Thomson, M. R. Struble, L. D. Butt, J. R. Huffaker, J. J. Allison, C. J. Caldwell and S. M. Edington, property owners residing in the vicinity of Penryn, Placer county, California. This contract recites that the above-named persons have requested petitioner to reconstruct and extend a certain 2,200 volt electric transmission line, and to build certain main line taps in order to serve them with electric energy, and that the cost of reconstructing and extending the transmission line and main line taps will be

approximately \$884. Petitioner agrees to reconstruct and extend the 2,200-volt line and the main line taps at its own expense, and to furnish and install the transformers, switches, and meters required for the delivery of electric energy to each of the consumers. The consumers agree to construct, at their own expense, extensions of the 2,200-volt line, over land owned or controlled by them, to the location of their respective residences or other points where the service is to be utilized, and to grant petitioner rights of way for such lines as it may construct in connection with service furnished under this contract. The consumers further agree to pay petitioner, at the end of each year during the term of the contract, a sum equal to the difference between the aggregate of all amounts paid by them for electric energy received during the year and \$442, which latter sum, it is agreed, shall be the annual minimum payment to petitioner. The contract is to become effective as soon as it has received the approval of the Railroad Commission.

The evidence shows that the present 2,200-volt line is to be reconstructed by petitioner at an estimated cost of \$527; that extensions to this 2,200-volt line are to be made by petitioner at an estimated cost of \$884; and that the transformers and meters to be furnished and installed by petitioner will cost about \$544. Thus it would seem that the total cost of construction and reconstruction to serve the seven consumers hereinbefore named will be in the neighborhood of \$1,955.

No evidence was introduced as to the additional expense to be incurred by the individual consumers for connecting their premises with the lines of petitioner, but on the basis of cost as estimated by petitioner for its tap lines, the total additional expense would be about \$1,150.

The connected load to be supplied by petitioner under the terms of the contract is said to be as follows:

Consumer	Lighting	Power
J. Thomson	400 watt	2 horsepower
M. R. Struble	500 watt	.....
L. D. Butt	400 watt	2 horsepower
J. R. Huffaker	240 watt	2 horsepower
J. J. Callison	400 watt	2 horsepower
C. J. Caldwell	600 watt	.....
S. M. Edington	400 watt	.....
Totals	3,000 watt	8 horsepower

The annual gross revenue from the proposed extensions, as estimated by petitioner, will be \$180. Not more than \$220 per year could be expected from the class of service to be supplied.

From all of the information available, it would seem that the revenue to be derived is insufficient to justify the extension of petitioner's lines to the consumers' premises, and it may be assumed for the present that the guaranteed annual minimum of \$442 is reasonable.

In view of the fact that no party to the contract, other than petitioner, appeared at the hearing, and for the reasons hereinbefore stated, I am of the opinion that the contract should be allowed to stand, at least until such time as the cost and conditions of service in the vicinity of Penryn shall have been investigated by the Commission.

While I am of the opinion that under the circumstances of this particular case it may not be fair to petitioner to require that this service be undertaken entirely at petitioner's expense, I wish it to be distinctly understood that this Commission does not consider it necessary or possible that each service extension shall be uniformly profitable, or that there be no unprofitable extensions. Inasmuch as rates for electric service are made for average conditions, it must be perfectly obvious that, if the rates for a given class of service are as a whole remunerative, these rates must provide for both that business which is more profitable and that which is less profitable than the average. The extremes in either direction undoubtedly include business which is so profitable as almost to warrant a special classification at lower rates, and business which is temporarily, at least, an actual burden upon other consumers of the same class. In view of these facts it will be evident that, if all unprofitable business is to be eliminated, the rates which may have been reasonable theretofore must be reduced to compensate for the reduced cost of service.

I recommend that the application be granted and submit herewith the following form of order:

ORDER.

A public hearing having been held in the above-entitled proceeding, and the same having been submitted, and being now ready for decision,—

It is hereby ordered that Pacific Gas & Electric Company be and the same is hereby authorized to serve electric energy to J. Thomson, M. R. Struble, L. D. Butt, J. R. Huffaker, J. J. Callison, C. J. Caldwell, and S. M. Edington, under the terms and conditions of contract dated July 3, 1914, attached to the petition herein and marked "Exhibit A;" provided that, except as in said contract otherwise specifically stated, the rates, rules, and regulations of petitioner on file with this Commission shall apply, in so far as applicable.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

CALIFORNIA RAILROAD COMMISSION.

CITY OF MONTEREY

v.

COAST VALLEYS GAS & ELECTRIC COMPANY.

[Case No. 533; Decision No. 2058.]

Procedure — Stipulation — Including adjoining town in proceeding.

The electric rates fixed by the Commission to be charged by a company in complainant city were also made to apply to an adjoining town, where a stipulation to this effect was entered into at the hearing.

Rates — Jurisdiction — Town surrendering control over utilities.

The electric rates to be charged by a company in an incorporated town may be fixed by the Commission, where the town has turned over its control of public utilities to the Commission at an election.

Rates — Electric — Schedule determined by former proceeding.

A gas and electric company was directed to place in effect for the cities of Monterey and Pacific Grove the schedule of electric rates established in a former proceeding for the city of Salinas, where it appeared that the entire valuation, operating expense, depreciation, and income of the company had been considered in such proceeding, and that the rates established for Salinas were equally applicable to Monterey and Pacific Grove.

Rates — Electric power — Optional rates.

An electric power rate schedule was approved which granted the consumer the option of combining power of less than 3 horse power and lighting at lighting rates, or of requiring separate power and lighting meters at the rates applicable thereto.

Service — Electric power — Kinds of — New consumers.

An electric power rate schedule was approved which reserved in the company the option, in the case of new consumers, of supplying either single or three phase current to power installations of less than 3 horse power.

[January 11, 1915.]

PROCEEDING to fix electric rates.

Appearances: Fred A. Treat for complainant; Chickering & Gregory and George H. Whipple for defendant.

REPORT OF THE COMMISSION.

Edgerton, Commissioner: In this case the city of Monterey complains against the rates charged for electricity in the city of Monterey by Coast Valleys Gas & Electric Company.

By stipulation at the hearing it was agreed that the rates for electricity fixed by the Commission to be charged in the city of Monterey should also be made to apply in the adjoining town of Pacific Grove, Pacific Grove being incorporated and having theretofore by an election duly turned its control over public utilities to the Commission.

Subsequent to the hearing herein this Commission, in case No. 495, fixed the rate to be charged by defendant for electricity in the city of Salinas. By stipulation at the hearing in this case, all of the evidence introduced in said case No. 495 was made applicable to the decision in this case.

In the opinion preceding the order in case No. 495, the entire valuation, operating expense, depreciation, and income of defendant company for all of its electrical properties are exhaustively considered. This consideration includes the electrical property here involved, in the cities of Monterey and Pacific Grove.

The rates fixed in the order in said case No. 495 are equally applicable to the cities of Monterey and Pacific Grove, as to the city of Salinas. It would be useless to cover the ground already covered in the opinion in case No. 495, and I shall adopt the facts and figures therein set out as applicable to this proceeding.

Subsequent to the original order in case No. 495, a supplemental order was issued therein, changing the rates theretofore fixed for street lighting. I recommend that the rates as fixed in the order in case No. 495, and the order supplemental thereto as applying to the city of Salinas, be adopted as the rates to be

charged by the defendant company, Coast Valleys Gas & Electric Company, for electric service in the cities of Monterey and Pacific Grove.

Herewith a form of order:

ORDER.

Complaint having been made by the city of Monterey against Coast Valleys Gas & Electric Company, and a public hearing having been had, and it being stipulated at said hearing that the rates fixed by the Commission for electric service in the city of Monterey should be and become the rates to be charged by Coast Valleys Gas & Electric Company for electric service in the city of Pacific Grove, and said case having been submitted and the Commission being fully advised,—

It is hereby found as a fact by the Railroad Commission of the state of California that defendant's existing rates for electric energy distributed to the city of Monterey and the inhabitants thereof, and the city of Pacific Grove and the inhabitants thereof, are unjust and unreasonable, in so far as they differ from the rates herein established; and—

It is hereby further found as a fact that the rates herein established are fair and reasonable rates for electric energy distributed by defendant to the city of Monterey and the inhabitants thereof, and the city of Pacific Grove and the inhabitants thereof.

Basing its order on the foregoing findings of fact,—

It is hereby ordered that Coast Valleys Gas & Electric Company be, and the same is hereby, directed to establish and file with the Railroad Commission, within thirty days from the date of this order, the following rates for electric energy supplied to the city of Monterey and the inhabitants thereof, and the city of Pacific Grove and the inhabitants thereof.

SCHEDULE A.

General Lighting Rates.

(Including all lamp socket appliances.)

C. R. C. Classification: Service No. 1121; Rate 0021; Serial 140821-1.
First 20 kilowatt hours per month, 8 cents per kilowatt hour.
Next 30 kilowatt hours per month, 6 cents per kilowatt hour.
Next 300 kilowatt hours per month, 5 cents per kilowatt hour.
All over 350 kilowatt hours per month, 3 cents per kilowatt hour.
Minimum charge, \$1.00 per meter per month.

A service charge of \$1.00 will be required of all applicants for service, same to be refunded if applicant remains a consumer of the company continuously for twelve months at one location.

SCHEDULE B.

Yearly Rate for Series Street Lighting Service.

(On lamp basis.)

All Night Lighting Schedule.

C. R. C. Classification: Service 2235; Rate 0800; Serial No. 141120—1.

Arc lamps: 6.6 ampere series, enclosed arc lamps	\$54 00 per lamp
100 watt series incandescent street lamps	21 60 per lamp
60 watt series incandescent street lamps	17 40 per lamp
40 watt series incandescent street lamps	15 00 per lamp

The above rates are for "all night" and every night service, and include all maintenance and lamp renewals necessary for such service.

SCHEDULE C.

Power Rates.

Until the further order of this Commission, Coast Valleys Gas & Electric Company may continue to charge the existing power rates applicable within the limits of the city of Monterey and the city of Pacific Grove, with the following changes:

1. The consumer shall have the option of combining power of less than 3 horse power and lighting at the lighting rates and at the lighting minimum, or of requiring separate power and lighting meters for each service at the rates and minimum charges applicable thereto.

2. In the case of new consumers, the company shall have the option of supplying either single or three phase current to power installations of less than 3-horse power.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

CALIFORNIA RAILROAD COMMISSION.

IN RE SUGAR PINE RAILWAY COMPANY.

[Case No. 207; Decision 2047.]

Valuation — Factors to be considered.

In a valuation proceeding the following matters are essential to the inquiry: (1) Organization, construction, and operation; (2) stocks and bonds; (3) revenues and expenses; (4) original cost; (5) reproduction cost; (6) reproduction cost less depreciation.

Accounting — Improper charges to capital — Revision of accounts.

A railroad company which makes a purely fictitious charge of \$1,000,000 to its capital account to represent the par value of all its authorized capital stock, and which, in addition to interest on its funded debt, has paid dividends in amount equal to more than one half of the reproduction cost new of its property as found by the Commission's valuation, should revise its accounts to show its financial condition in accordance with the facts.

Valuation — Original cost — Definition.

The term "original cost" in California means the original book cost,

and is defined as the actual expenditures chargeable to capital account, in accordance with the Interstate Commerce Commission's classification, in cash or its equivalent in terms of cash, by the public utility for its operative property in the state of California, as of date of valuation.

Valuation — Reproduction cost — Definition.

The term "reproduction cost" of a railroad in California means the estimated cost in cash of acquiring the operative right of way and other operative real estate, and of reproducing, in the condition in which it was acquired, the other physical property of the public utility in the state of California, as of the date of valuation; to which are added overhead expenditures for engineering, law, interest, and commission, and other similar items.

Valuation — Reproduction cost less depreciation — Definition.

The term "reproduction cost less depreciation" in California means the reproduction cost less the diminution in the value of the physical elements of the property, due to use, age, obsolescence, and inadequacy, or other causes, this diminution being called "depreciation," and plus the increase in the value of the physical elements of the property, due to age or other causes, this increase being called "appreciation."

Valuation — Reproduction cost and present value of the Sugar Pine Railway Company.

Upon the valuation of the property of the Sugar Pine Railway Company in California, the Commission found the reproduction cost of the operative physical property to be \$355,511.65, as of June 30, 1913, and the present value to be \$212,619.27, as of the same date.

[January 2, 1915.]

VALUATION of the property of a railway company on the Commission's own initiative.

REPORT OF THE COMMISSION.

Loveland, Commissioner: This is one of the valuation cases brought upon the Commission's own initiative. It was instituted under the provisions of § 20 of the Stetson act, effective February 10, 1911, and continued under the provisions of §§ 47 and 70 of the public utilities act, effective March 23, 1912.

Such findings as are made in this opinion are findings of fact regarding certain factors and elements which make up the value of this property, and no attempt will be made to determine its ultimate or fair value irrespective of the purpose for which the valuation might be used.

On March 11, 1912, the Sugar Pine Railway Company was ordered to prepare and file an inventory and appraisal of all physical property owned by it in the state of California. About

December 26, 1913, this inventory and appraisal was received by the Commission, and Exhibit "A," attached hereto, is a copy of the final summary sheet which formed a part thereof.

In accordance with the usual custom of the Commission the Commission's engineering department was instructed to make an independent inventory and appraisal, for the purpose of checking the report submitted by the company. About May 14, 1914, this work was started, and the report was completed and submitted to the Commission on September 1, 1914. Attached to this opinion, as Exhibit "B," is a copy of the final summary sheet made by the Commission's engineering department, which sums up the results of its appraisal.

On September 16, 1914, a copy of this report of the Commission's engineering department was submitted to the railway company, and thereafter, on December 7, 1914, the company notified the Commission by letter that its board of directors had decided to accept the value set upon its property by the Commission's engineers.

The following matters are essential in an inquiry of this sort, and they will be considered in the order listed:

- (1) Organization, construction and operation.
- (2) Stocks and bonds.
- (3) Revenues and expenses.
- (4) Original cost.
- (5) Reproduction cost.
- (6) Reproduction cost less depreciation.

(1) Organization, construction and operation. The Sugar Pine Railway Company was organized in February, 1903, to build a standard gauge railway from Ralph, on the Sierra Railway Company's line, to a point now known as Middle Camp. The road was planned principally as a lumber and logging road, and the company controlled by the interests behind the Sierra Railway Company of California, who, at the same time, were the owners of large timber holdings in that region. The actual construction of the line was started in 1902. The first unit of the line was ready for operation between Ralph and Middle Camp in 1903, while the second unit, between Middle Camp and Lyons dam, was not finished until 1907, so that in that year the line was practically completed as it now exists. On May 23,

1908, the control of the property passed from Mr. T. S. Bullock, the principal stockholder and president since the time of organization, to the Standard Lumber Company, by means of a stock transaction. The details of this deal are so interwoven with other business transacted at the same time between the two parties that the actual details of the transfer are not now available. The property has remained in the control of the Standard Lumber Company ever since.

The Sugar Pine Railway Company now owns and operates in Tuolumne county 14.15 miles of standard gauge railway, extending from Ralph to Lyons dam. In addition to this property the company owns one fuel oil tank and a spur track 525 feet long at Standard, and one engine house, one fuel oil tank, and two spurs, 375 feet and 210 feet long respectively, at Sonora, both of these stations being on the Sierra railway. Extending from Lyons dam to Camp Frazier, a distance of 6 miles, is a piece of standard gauge track owned by the Standard Lumber Company. This track is a feeder to the Sugar Pine Railway, although the latter company does not operate it. The Sugar Pine Railway has, however, operating rights over the Sierra Railway from Sonora to Ralph, a distance of 9.46 miles.

The country through which this road passes is very rough. It was originally covered by sugar, white and yellow pine, and fir and cedar timber, but this has been logged off, and at the present time, with the exception of one orchard, the land along the track is used for no other purpose than grazing. The elevation at Ralph is 2,831 feet. From this point the grade ascends more or less continuously until an elevation of 4,240 feet is reached at the end of the line. The maximum grade is 4.75 per cent. The maximum curve on the line is 56 degrees, with the greater part of the many curves varying from 20 degrees to 40 degrees. The roadbed width in both excavation and embankment is about 12 feet. Most of the grading is sidehill work, and about 55 per cent of the excavated material is earth. The eight trestles, which comprise all the bridges on the line, are of timber, and the culverts are constructed of rubble, timber, and terra cotta pipe. The track is laid with steel weighing 30 and 40 pounds per yard, and this light weight steel necessitates the use of more than the usual number of ties per mile.

No passenger trains are operated over this line. The principal business is done during the summer months, while the timber and logging season continues. Practically all of the tonnage handled on the road consists of logs, and none of the company's trains operate on a regular schedule.

(2) Stocks and bonds. The capital stock of the Sugar Pine Railway Company consists of 10,000 shares of common stock, with a par value of \$100 each, or a total capitalization of \$1,000,000. Six hundred shares of this amount was the first actually subscribed. During the construction of the road an additional 1,600 shares was subscribed for by T. S. Bullock, its president. On October 5, 1903, the board of directors authorized a bonded indebtedness to the amount of \$480,000, these bonds being first-mortgage 5 per cent bonds maturing in forty years, with interest payable semiannually; \$180,000 worth of these bonds were issued on the same day, and of this amount \$155,000 was taken by the Standard Lumber Company and \$25,000 by the Sierra Railway Company. In 1910, after the control of the road had passed to the Standard Lumber Company, \$640,000 of additional stock was issued to the Standard Lumber Company, and at the present time the entire amount of the authorized capital stock is outstanding. Interest on the outstanding bonds has regularly been paid from the beginning. In 1909 a dividend of \$43,000 was declared, made up, as stated in the company's annual report for the year 1909, of accumulated profits and surplus for the years 1906, 1907, and 1908. In 1910 dividends to the amount of \$36,000 were paid out of profits for the year ending December 31, 1909, and in January, 1911, a further dividend of \$110,000 was declared. This left a deficit on June 30, 1911, of \$14,161.42, and although no dividends were declared either in 1912 or 1913, a deficit has remained on the company's books, amounting on June 30, 1913, to \$13,387.80.

It must be stated that from the annual reports of the company to this Commission the financial history of this company appears obscure, and that its financial status as now shown is largely fictitious, and does not represent the facts. According to the company's own reports the investment in road and equipment on June 30, 1907, when the road was practically finished, amounted to only \$180,000. The 1909 report shows a "total expenditure

for road and equipment to June 30, 1909," of \$375,133.16. With the exception of some thousands of dollars' worth of equipment, nothing was added to the value of the property to account for the difference between \$180,000, and the \$375,000. In the 1910 report a new item is added to the capital account, namely, "cost of road purchased, \$1,000,000." Under the Interstate Commerce Commission's classification, which is followed by this road in its accounting, it is prescribed that to this account should be charged amounts paid for road purchased, and that where the payment is made by an issue of the company's securities or other commercial paper, the cash value thereof at the time of such payment should be charged. In this case the charge of \$1,000,000 is purely fictitious. Not a single foot of new line, in the meaning of the classification, was acquired. The \$1,000,000 simply represented the par value of all of the authorized capital stock, and is pure water. A year later 11 per cent dividends were paid on this fictitious capitalization. The company, in addition to interest on funded debt, has paid in all \$189,000 in dividends, equal to more than half of the reproduction cost new of the property as found by the engineering department's valuation. It is my opinion that this company should revise its accounts to show its financial condition in accordance with the facts. The table shown under the next caption, "Revenues and Expenses," more fully shows the financial condition of the road as represented in its accounts.

(3) Revenues and expenses. As stated heretofore, this railway is principally a logging and lumber road. Practically all of the tonnage handled by the road consists of logs, a commodity upon which very low rates obtain, and this fact will explain the unusually low receipts per ton mile in the following tabulation:

Number of tons carried earning revenue	53,376 00
Number of tons carried one mile	919,666 00
Number of tons carried one mile per mile of road	38,952 00
Average distance haul of one ton, miles	17 23
Average amount received for each ton of freight	1 44
Average receipts per ton mile	083
Freight revenue per mile of road	3,254 28

All significant traffic, revenue, and other statistics are shown in the table following, which also shows the most important figures from the road's annual balance sheets:

CALIFORNIA RAILROAD COMMISSION.

Traffic Revenue and Other Statistics.

No.	Item	Amounts				
		1909	1910	1911	1912	1913
1	Mileage owned	15.00	15.00	14.84	14.84	14.15
2	Mileage in operation	15.00	23.81	23.65	23.65	23.61
3	Capital stock authorized	\$1,000,000 00	\$1,000,000 00	\$1,000,000 00	\$1,000,000 00	\$1,000,000 00
4	Capital stock outstanding	360,000 00	1,000,000 00	1,000,000 00	1,000,000 00	1,000,000 00
5	Bonds authorized	\$480,000 00	\$480,000 00	\$480,000 00	\$480,000 00	\$480,000 00
6	Bonds outstanding	180,000 00	180,000 00	180,000 00	180,000 00	180,000 00
7	Total outstanding liability	\$540,000 00	\$1,180,000 00	\$1,180,000 00	\$1,180,000 00	\$1,180,000 00
8	Total outstanding liability per mile	36,000 00	78,667 00	79,514 00	79,514 00	83,392 00
9	Cost of road and equipment as per company's reports	Not shown	\$1,249,482 22	\$1,251,478 71	\$1,255,240 20	\$1,297,219 76
10	Cost of road per mile of road	Not shown	83,298 82	84,331 45	84,584 92	91,676 31
11	Equipment owned—locomotives	Rented	2	3	3	4
12	Equipment owned—flat cars	Rented	50	50	50	70
13	Equipment owned—caboose*	Rented	1	1	1	1
14	Earnings—passenger	None	None	None	None	None
15	Earnings—freight	\$66,903 17	\$155,656 69	\$130,211 07	\$65,548 15	\$76,833 56
16	Earnings—total	\$66,903 17	\$156,669 02	\$131,175 31	\$65,548 15	\$76,833 56
17	Earnings per mile of road	4,460 21	6,579 97	5,505 75	2,771 59	3,254 28
18	Expenses—maintenance, way and stations	\$10,070 59	\$18,616 01	\$14,801 50	\$9,383 04	\$11,450 15
19	Expenses—maintenance, equipment	3,401 32	6,180 54	9,062 55	6,218 85	9,927 12
20	Expenses—transportation	14,628 92	27,437 40	32,436 74	25,940 49	29,724 61
21	Expenses—general	2,890 11	6,507 24	5,927 58	5,786 46	6,280 60
22	Expenses—total operating	\$30,990 94	\$58,741 19	\$62,228 37	\$47,328 84	\$57,382 48
23	Expenses—total operating per mile	2,066 06	2,467 08	2,631 22	2,001 22	2,430 43
24	Net operating revenue	\$35,912 23	\$97,927 83	\$68,946 94	\$18,219 31	\$19,451 08
25	Railway tax accruals	\$550 00	\$896 17	\$1,686 63	\$7,710 51	\$2,671 84
26	Interest on bonds	9,000 00	9,000 00	9,000 00	9,000 00	9,000 00
27	Other deductions	None	7,703 15	4,718 87	4,284 65	4,191 42
28	Net income	\$26,362 23	\$80,328 51	\$53,541 44	\$2,775 85	\$3,587 82
29	Additions and betterments	\$14,825 92	\$54,349 06	\$3,927 09	\$5,784 27	\$43,623 18
30	Sinking fund	Not shown				
31	Total accumulated surplus at end of year	\$1,177 51	\$45,430 19	\$14,161 42	\$16,739 87	\$13,387 80
32	Tonnage—per cent of total	Not shown				
33	Tonnage—products of forests	Not shown	95.10	97.44	97.17	88.62
34	Tonnage—products of manufactories	Not shown	1.86	1.43	1.53	10.15
	Tonnage—all others	Not shown	3.04	1.13	1.25	1.23

* Company owns no passenger or box cars.

(4) Original cost. The term "original cost" means the original book cost, and is defined as the actual expenditures chargeable to capital account, in accordance with the Interstate Commerce Commission's classification, in cash or its equivalent in terms of cash, by the public utility for its operative property in the state of California, as of the date of valuation.

The original cost of this property as defined above is not obtainable, for the reason that its operations were interwoven, first, with those of Mr. Bullock of the Sierra Railway Company, and, later, with those of the Standard Lumber Company, and the accounts not properly segregated. No attempt, therefore, will be made to make a finding regarding original cost. The road was built, however, as cheaply as possible, and largely with discarded second-hand material from the Sierra railway. Lumber for ties, bridges, and culverts came from the timber lands owned by the same interest, and I believe that the cost of road as stated in the company's book in 1907, *viz.*, \$180,000, and covered by bonds outstanding, about represents the actual investment.

(5) Reproduction cost. The term "reproduction cost" is defined as the estimated cost in cash of acquiring the operative right of way and other operative real estate, and of reproducing, in the condition in which it was acquired, the other physical property of the public utility in the state of California, as of the date of valuation; to which are added overhead expenditures for engineering, law, interest, and commission, and other similar items.

The reproduction cost, as found by the company's engineers, is \$397,673.32. The Commission's engineering department found a value of \$355,511.65, a difference of \$42,161.67. This decrease is due generally to the lower unit prices used by the Commission's engineers, together with the use of a lower percentage for interest and commissions. The greatest discrepancy (\$15,-899.34) between individual accounts in the two appraisals is under account "Rails," where the Commission's engineering department estimated second-hand rails in accordance with the facts, while the company's engineers figured their rails as being new. The difference between the appraisals under "Interest and Commissions" amounts to \$11,623.94, the company's figure being in excess of the Commission's engineers' figure. The engineering department figured interest as being 3 per cent on classes 3 to 53, inclusive, being at the rate of 6 per cent per annum for one half

of the estimated construction period of one year (see Exhibit "B"), while in the company's appraisal this item is estimated as being 6 per cent on classes 1 to 53, inclusive (see Exhibit "A").

I believe the figures used by the engineering department to be in accordance with the facts as far as they can be ascertained, and since the Sugar Pine Railway Company has accepted these figures, I find as a fact that the reproduction cost, as that term is hereinbefore defined, of the Sugar Pine Railway Company's operative property in the state of California, as of June 30, 1913, is \$355,511.65.

(6) Reproduction and cost less depreciation. The term "reproduction cost less depreciation" is defined as the reproduction cost less the diminution in the value of the physical elements of the property, due to use, age, obsolescence, and inadequacy or other causes, this diminution being called "depreciation," and plus the increase in the value of the physical elements of the property, due to age or other causes, this increase being called "appreciation."

The company's engineers, for this value, arrived at a figure of \$380,943.39, while the Commission's engineers have determined it to be \$312,619.27, making a difference of \$68,324.62. Both the Commission's and the company's engineers have derived their present value by depreciating the reproduction cost, and the same differences which obtained under reproduction cost would then be carried through to reproduction cost less depreciation. The fact that the difference between the two appraisals is greater in this column than under reproduction cost is due to the fact that the company's engineers have placed a lower rate of depreciation, and a consequent higher condition per cent on the property than was considered proper by the Commission's engineering department. The company has, however, now accepted the figures of the Commission's engineers, and the same reasons which lead me to accept their figures for reproduction cost lead me to accept also their figures for reproduction cost less depreciation. I find as a fact that the reproduction cost less depreciation, as that term has been hereinbefore defined, of the operative property of the Sugar Pine Railway Company in the state of California, as of June 30, 1913, is \$312,619.27.

The foregoing opinion and findings are hereby approved and ordered filed as the opinion and findings of the Railroad Commission of the State of California.

EXHIBIT "A." COMPANY'S APPRAISAL.

Name of owner, Sugar Pine Railway Company; operating company, Sugar Pine Railway Company; division one; from Ralph to Lyons Dam; miles, main line track, 14.15; miles, second track, 2.42; miles, yard tracks, etc. 16.57; W. A. Newell, inspector; date compiled, October 3, 1913.

Class No.	Form No.	L. C. C. Acct. No.	Classes	Original cost	Reproduction value	Cond. per cent	Present value
1	1	2	Right of way and station grounds	-----	\$3,484 50	-----	\$15,767 00
2	2	3	Real estate	-----	87,502 21	-----	96,252 43
3	3	4	Grading	-----	-----	-----	-----
4	4	5	Tunnels	-----	-----	-----	-----
5	5	6	Steel bridges and trestles	-----	9,689 68	-----	7,267 26
6	6	6	Pile and frame trestles	-----	2,691 62	-----	2,018 72
7	7	6	Culverts	-----	31,718 85	-----	20,181 41
8	8	7	Ties	-----	55,322 99	-----	47,024 55
9	9	8	Rails	-----	739 25	-----	564 44
10	10	9	Frogs and switches	-----	20,091 00	-----	18,081 90
11	11	10	Track fastenings and other material	-----	10,560 00	-----	10,560 00
12	12	11	Ballast	-----	13,502 00	-----	13,502 00
13	13	12	Tracklaying and surfacing	-----	1,748 30	-----	1,448 72
14	14	13	Roadway tools	-----	470 00	-----	352 50
15	15	14	Fencing right of way	-----	85 00	-----	71 00
16	16	15	Crossings and signs	-----	-----	-----	-----
17	17	16	Interlocking plants	-----	-----	-----	-----
18	18	16	Signal apparatus	-----	-----	-----	-----
19	19	17	Telegraph and telephone lines	-----	80 00	-----	64 00
20	20	18	Station buildings and fixtures	-----	-----	-----	-----
21	21	18	Platforms, walks, paving and curb	-----	-----	-----	-----
22	22	19	General office buildings and fixtures	-----	600 00	-----	540 00
23	23	20	Shop buildings and engine houses	-----	-----	-----	-----
24	24	20	Transfer and turntables, cinder pits, etc.	-----	-----	-----	-----
25	25	20	Miscellaneous shop buildings and structures	-----	-----	-----	-----
26	26	21	Shop machinery and tools	-----	2,075 54	-----	1,935 26
27	27	22	Water stations	-----	5,302 00	-----	5,302 00
28	28	23	Fuel stations	-----	-----	-----	-----
29	29	24	Grain elevators	-----	-----	-----	-----
30	30	25	Storage warehouses	-----	-----	-----	-----
31	31	26	Dock and wharf property	-----	-----	-----	-----
32	32	27	Electric light plants	-----	-----	-----	-----
33	33	28	Electric power plants	-----	-----	-----	-----
34	34	29	Electric power transmission	-----	-----	-----	-----
35	35	30	Gas producing plants	-----	750 00	-----	562 50
36	36	31	Miscellaneous structures	-----	-----	-----	-----
			Total classes, 1 to 36, inclusive	-----	\$246,412 94	-----	\$241,485 69

EXHIBIT "A." COMPANY'S APPRAISAL—Continued.

Class No.	Form No.	I. C. C. Act. No.	Classes	Original cost	Reproduction value	Cond. per cent	Present value
37	---	1	Engineering, 5 per cent, 1 to 36, inclusive	1	12,370 65	---	12,074 28
38	37	32	Transportation of men and material	---	---	---	---
39	38	33	Rent of equipment	---	---	---	---
40	38	34	Repairs of equipment	---	---	---	---
41	---	35	Earning and operating expenses during construction	---	---	---	---
42	---	35½	Injuries to persons	---	---	---	---
43	---	36	Cost of road purchased	---	---	---	---
Total classes 1 to 43, inclusive				---	\$258,783 59	---	\$253,559 97
44	39	37	Steam locomotives	---	41,600 00	---	38,440 00
45	---	38	Electric locomotives	---	---	---	---
46	40	39	Passenger train cars	---	---	---	---
47	41	40	Freight train cars	---	57,750 00	---	56,600 00
48	42	41	Work equipment	---	1,750 00	---	1,487 50
49	43	42	Floating equipment	---	---	---	---
Total classes 1 to 49, inclusive				---	\$359,283 59	---	\$344,087 47
50	---	43	Law expenses, 1 per cent, classes 1 to 36, inclusive	---	3,592 84	---	3,440 87
51	44	44	Stationery and printing	---	200 00	---	200 00
52	44	45	Insurance	---	---	---	---
53	45	46	Taxes	---	---	---	---
Total classes 1 to 53, inclusive				---	\$363,076 43	---	\$347,728 34
54	---	47	Interest and commission, 6 per cent, classes 1 to 53, inclusive	---	21,784 59	---	20,863 70
55	45	48	Other expenditures	---	---	---	---
56	---	---	Contingencies, 3 per cent, classes 1 to 53, inclusive	---	10,892 30	---	10,431 85
57	46	---	Stores and supplies on hand for use in California	---	1,920 00	---	1,920 00
Grand total				---	\$397,673 32	---	\$380,943 89
Average per mile for main line track				---	28,104 12	95 79	26,921 85

EXHIBIT "B." COMMISSION'S APPRAISAL.

Owning company, Sugar Pine Railway company; operating company, same; operating division, entire line; valuation unit, entire line; from Ralph to Lyons Dam, Tuolumne County.

Submitted with report of Assistant Engineer, M. H. Brinkley; date compiled, June 12, 1914; main line first track, 14.15 miles; line second track, 2.245 miles; yard tracks, sidings, etc., 16.395 miles.

Class No.	Form No.	I. C. C. Acct. No.	Classes	Original cost	Reproduction cost	Cond. per cent	Reproduction cost, less depreciation
37	1	1	Engineering -----		\$11,354 45	100	\$11,354 45
1	1	1	Right of way and station grounds -----		3,049 17	100	3,049 17
2	2	2	Real estate -----				
3	3	3	Grading -----		84,348 43	100	84,348 43
4	4	4	Tunnels -----				
5	5	5	Steel bridges and trusses -----				
6	6	6	Pile and frame trestles -----		7,527 51	66	4,955 88
7	7	7	Culverts -----		2,339 75	72	1,683 64
8	8	8	Fences -----		31,325 94	54	18,688 43
9	9	9	Leads -----		39,123 65	76	29,818 67
10	10	10	Frogs and switches -----		1,299 87	72	936 64
11	11	11	Track fastenings and other material -----		19,001 18	78	14,807 05
12	12	12	Ballast -----		6,652 80	100	6,652 80
13	13	13	Tracklaying and surfacing -----		17,712 21	70	12,487 10
14	14	14	Roadway tools -----		1,552 26	75	1,164 19
15	15	15	Fencing right of way -----		497 12	60	298 27
16	16	16	Crossings and signs -----		2,352 68	80	1,882 15
17	17	17	Interlocking plants -----				
18	18	18	Signal apparatus -----				
19	19	19	Telegraph and telephone lines -----				
20	20	20	Station buildings and fixtures -----		164 00	80	131 20
21	21	21	Platforms, walks, paving and curb -----				
22	22	22	General office buildings and fixtures -----				
23	23	23	Shop buildings and engine houses -----		758 50	80	606 80
24	24	24	Transfer and turntables, cinder pits, etc. -----				
25	25	25	Miscellaneous shop buildings and structures -----				
26	26	26	Shop machinery and tools -----				
27	27	27	Water stations -----		1,393 92	75	1,052 43
28	28	28	Fuel stations -----		6,083 07	92	5,610 49
29	29	29	Grain elevators -----				
30	30	30	Storage warehouses -----				
31	31	31	Dock and wharf property -----				
32	32	32	Electric light plants -----				
33	33	33	Electric power plants -----				
34	34	34	Electric power transmission -----				
35	35	35	Gas producing plants -----				

EXHIBIT "B." COMMISSION'S APPRAISAL—Continued.

Class No.	Form No.	I. C. C. Acct. No.	Classes	Original cost	Reproduction cost	Cond. per cent	Reproduction cost, less depreciation
36	36	31	Miscellaneous structures				
38	37	32	Transportation of men and material		645 75	73	475 09
39	38	33	Rent of equipment				
40	38	34	Repairs of equipment				
41	----	35	Earning and operating expenses during construction				
42	----	35½	Injuries to persons				
43	----	36	Cost of road purchased				
44	39	37	Steam locomotives		42,312 00	93	39,143 00
45	----	38	Electric locomotives				
46	40	39	Passenger train cars				
47	41	40	Freight train cars		55,115 00	91	50,202 00
48	42	41	Work equipment		546 91	80	437 53
49	43	42	Floating equipment				
50	----	43	Law expenses, 1 per cent, classes 3 to 36, inclusive		2,270 89	100	2,270 89
51	44	44	Stationery and printing, included in class 37				
52	44	45	Insurance, included in class 55				
53	45	46	Taxes, included in class 55				
54	----	47	Interest and commission, 3 per cent of classes 3 to 50, inclusive		10,160 65	100	10,160 65
55	45	48	Other expenditures, ½ of 1 per cent, classes 3 to 50, inclusive		1,693 44	100	1,693 44
57	46	----	Stores and supplies on hand for use in California		1,920 00	100	1,920 00
			Grand total		\$355,511 65	88	\$312,619 27
			Average per mile for main track		25,124 50	88	22,093 23
			Total road, classes 1 to 36, inclusive		230,138 31	85	195,437 31
			Total equipment, classes 44 to 49, inclusive		97,973 91	92	89,782 53
			Total general, classes 37 and 50 to 55, inclusive		25,479 43	100	25,479 43
			Total stores on hand, class 57		1,920 00	100	1,920 00

Contingencies amount to \$8,256.30, or 2.52 per cent of reproduction values. I. C. C. Accounts 4 to 42, inclusive.

CALIFORNIA RAILROAD COMMISSION.

IN RE SOUTHERN COUNTIES GAS COMPANY OF
CALIFORNIA.

[Application No. 1198; Decision No. 2079.]

Security issues — Notes — For new construction.

A gas company was authorized to pledge \$65,000 par value of an issue of \$240,500, three-year 6 per cent gold notes previously authorized, to secure three promissory notes aggregating \$42,812.15, which latter notes had been used to pay for the construction of pipe lines.

Security issues — Notes — Proper capital charges — Operating expenses.

Authority was refused a gas company to pledge part of an issue of gold notes previously authorized to secure certain promissory notes, where it appeared that the latter notes had been given in payment for operating expenses.

Penalties — Infractions of utilities act.

The Commission will not be inclined to deal lightly with even slight infractions of the public utilities act.

[January 15, 1915.]

APPLICATION for authority to pledge securities; granted in part and denied in part.

Appearances: Mountford S. Wilson for applicant.

REPORT OF THE COMMISSION.

FOURTH SUPPLEMENTAL OPINION.

Loveland, Commissioner: On July 18, 1914, this Commission issued its order in the above-entitled matter (Decision No. 1675), authorizing the applicant to issue and sell \$240,500 of its three-year 6 per cent gold notes. In a supplemental order this Commission approved a proposed trust deed by which these gold notes were to be secured. On November 17, 1914, Southern Counties Gas Company filed an application requesting a supplemental order permitting it to pledge certain of these three-year 6 per cent gold notes as security for certain promissory notes. Thereafter, on December 17, 1914, the applicant filed an amendment to its supplemental application. On December 31, 1914, a hearing was held upon the supplemental application and the amendment thereto. It is this matter which is now before the Commission for determination.

The applicant asks for authority to pledge a portion of the \$240,500, face value of three-year 6 per cent gold notes heretofore authorized, as security for certain promissory notes. It asks for authority from this Commission as follows:

(a) To pledge \$35,000 of its three-year 6 per cent gold notes as collateral security for a note in the sum of \$25,775.56 to the California National Supply Company.

(b) To pledge \$20,000 of its three-year 6 per cent gold notes as collateral security for a note in the sum of \$12,036.59 to Dan Murphy and Richard J. Dillon.

(c) To pledge in the ratio of 100 to 75, sufficient of its three-year 6 per cent gold notes as collateral security for a note to Union Oil Company in the sum of \$5,057.49.

(d) To pledge in the ratio of 100 to 75, sufficient of its three-year 6 per cent gold notes as security for a note to Wilson & Wilson, attorneys, in the sum of \$2,000.

(e) To pledge at the ratio of 100 to 75, sufficient of its three-year 6 per cent gold notes as security for a note to be issued to a payee not yet specified, in the sum of \$5,000.

(f) To pledge \$10,000 of its 6 per cent three-year gold notes as collateral security for a note in the sum of \$5,000 to Farmers & Merchants National Bank of Baltimore.

The note to the California National Supply Company was given for pipe, etc., used in the construction of a line from the Olinda natural-gas field. The note to Dan Murphy and Richard A. Dillon represents a consideration for advances by them for the construction of a pipe line from the natural-gas field in Coyote Hills to Fullerton, said line being $4\frac{1}{4}$ miles in length.

I recommend that the application be granted for the pledge of bonds in the amounts named, for the indebtedness stated to the California National Supply Company and to Dan Murphy and Richard A. Dillon.

The items specified as due Union Oil Company and Wilson & Wilson, and represented by a proposed note of \$5,000 to an unnamed payee, appear to be operating expenses. The sum represented by these three items amounts to \$12,057.49. I do not believe this Commission should authorize that notes be pledged for this indebtedness. In this connection I call attention to the

fact that dividends were paid by this applicant during 1912 and 1913 in the sum of \$20,000.

Applicant is now introducing natural gas into its system, and during the change from the artificial gas basis to the natural gas basis, a certain falling off in revenue is inevitable. I believe the company, by some other means, as, for instance, through its stockholders who have received this dividend of \$20,000, might more properly, for the present at least, finance this indebtedness in the sum of \$12,057.49.

It appeared in testimony that the applicant had already pledged its three-year 6 per cent gold notes in the sum of \$10,000 as collateral security for a note to Farmers & Merchants National Bank of Baltimore in the sum of \$5,000, and that it had pledged these notes without the authority of this Commission.

It is not my belief that this Commission should appear to quibble over a matter that may not in itself be of very great consequence, but it is also my belief that this Commission should and must insist upon a full and complete compliance with the provisions of the public utilities act. While in the present instance, therefore, I shall not recommend that any of the penal provisions of the statutes be invoked, I think it is well that the public utilities, generally, should be informed that this Commission will not be inclined to deal lightly with even these smaller infractions of the statute.

For the reasons set forth above, I recommend that the application be granted in part and in part denied.

I submit the following form of order:

FOURTH SUPPLEMENTAL ORDER.

Southern Counties Gas Company of California having applied to this Commission for authority to pledge certain of its three-year 6 per cent gold notes as collateral security for certain promissory notes;

And a hearing having been held, and it appearing that the purposes for which it is herein proposed to pledge \$65,000 of said three-year 6 per cent gold notes are not in whole or in part reasonably chargeable to operating expenses, or to income,—

It is hereby ordered that Southern Counties Gas Company of California be granted authority, and it is hereby granted author-

ity, to pledge \$65,000 of its three-year 6 per cent gold notes as collateral security for certain promissory notes as follows:

\$35,000 of said three-year 6 per cent gold notes as collateral security for a note to California National Supply Company in the sum of	\$25,775 56
\$20,000 of said three-year 6 per cent notes as collateral security for a note to Dan Murphy and Richard J. Dillon in the sum of	12,036 59
\$10,000 of said three-year 6 per cent gold notes as collateral security for a note to Farmers and Merchants National Bank of Baltimore in the sum of	5,000 00

It is further ordered that the application herein made to pledge an additional amount of applicant's three-year 6 per cent gold notes be and the same is hereby denied.

The authority herein granted to pledge said \$65,000 of three-year 6 per cent gold notes is granted upon the following conditions, and not otherwise:

(1) The applicant shall report on the 25th day of every month for the months preceding the note or notes herein pledged, in accordance with the provisions of this order.

(2) The authority herein granted is conditioned upon the payment of the fee prescribed under the public utilities act.

(3) The authority herein granted shall apply only to such note or notes as shall have been issued on or before June 30, 1915.

(4) The three-year 6 per cent gold notes herein authorized to be pledged are authorized for specific purposes only, and after the notes, as security for which they shall have been pledged, have been paid, the three-year 6 per cent notes shall be returned to the applicant's treasury, and issued thereafter only as shall be authorized by this Commission.

The foregoing opinion and fourth supplemental order are hereby approved and ordered filed as the opinion and fourth supplemental order of the Railroad Commission of the State of California.

CALIFORNIA RAILROAD COMMISSION.

IN RE ESCONDIDO UTILITIES COMPANY.

[Application No. 1443; Decision No. 2097.]

Security issues — Stock assessment to reduce indebtedness.

A corporation was ordered to issue promissory notes to the amount of \$29,000, on condition that it levy an assessment on its stock to the

sum of \$5,000, the proceeds therefrom to be applied to the indebtedness represented by such note issue, it appearing that the earnings of the company were not adequate to meet higher interest charges and that increase in the earnings was more or less uncertain.

Security issues — Sale price of 8 per cent promissory notes.

An authorized 8 per cent promissory note issue was ordered to be sold at not less than 96½ per cent of its face value.

Security issues — Bonds pledged as security — Proportion.

A public-service corporation was granted the authority to pledge its first mortgage 6 per cent gold bonds as collateral security for a \$29,000 note issue in such ratio that the face value of the notes issued should be not less than 66½ per cent of the face value of the bonds.

[January 22, 1915.]

APPLICATION for authority to issue promissory notes and pledge bonds as collateral security; granted conditionally.

Appearances: A. H. Sweet for applicant.

REPORT OF THE COMMISSION.

Gordon, Commissioner: This is an application on the part of the Esccondido Utilities Company to issue its two-year 8 per cent note or notes for the face value of \$30,000, and pledge as security therefor its first-mortgage 6 per cent gold bonds to the face value of \$45,000. It is proposed to sell the note or notes so as to realize \$28,000, and use the proceeds for the following purposes:

To redeem bonds	\$3,000 00
To retire note now held by the First National Bank of Esccondido	5,000 00
To retire note now held by W. S. Sheperdson	16,000 00
To pay floating indebtedness	1,449 53
To defray cost of improvements of present system, (Schedule 2, Sec. 1)	2,473 50
Balance	76 97
Total	\$28,000 00

Applicant desires authority to apply the difference, if any, between the face value (\$16,000) of the note held by W. S. Sheperdson and the amount paid by it to discharge said note, to pay the cost, so far as possible, of extensions which as per schedule 2, § 2, of the application herein, is estimated at \$6,051.71. The cost of the proposed extensions, applicant segregates as follows:

Transformers, cutouts, power and lights	\$1,430 00
105 meters at \$6.85	719 25
150 35 foot poles at \$6.00	900 00
100 30 foot poles at \$5.00	500 00
150 20 foot poles $\frac{3}{8}$ at \$1.00	150 00
150 crossarms 3 x 4, 6 pin. at 50 cents	75 00
100 crossarms 3 x 4, 4 pin. at 35 cents	35 00
350 brackets (oak) at 10 cents	3 50
600 glass insulators, 2,300 volts	210 00
800 glass insulators, 115 volts	240 00
1,000 feet $\frac{5}{16}$ inches galvanized cable	50 00
bolts, nuts and washers	50 00
1,400 oak pins	100 00
2,216 pounds No. 6 copper wire at 18 cents	398 88
1,046 pounds No. 10 W. P. wire at 18 cents	190 08
Labor	1,000 00
Total	\$6,051 71

Escondido Utilities Company is engaged in the gas and electric business in Escondido, San Diego county. For the thirteen months ending December 31, 1914, it reported operating revenues amounting to \$16,555.40. For the same period the operating expenses (including \$2,359.16 interest, \$766.49 taxes but no depreciation) amounted to \$17,447.59. The deficit for the thirteen months, without charging depreciation, was \$891.99.

For the details in regard to the operations of this applicant and the circumstances surrounding the issue of its note of \$16,000, to W. S. Sheperdson, reference is hereby made to the record in application No. 1355, upon which findings will hereafter be issued.

In this application, as stated above, applicant desires authority to issue its 8 per cent note or notes to the face value of \$30,000 at such price as to net it \$28,000. Applicant desires further authority to issue said note or notes for a period of time not exceeding two years. The interest on the \$30,000 at 8 per cent would amount to \$2,400 per annum. Taking into consideration the proposed discount, applicant would be paying more than 15 per cent for the use of the money if borrowed for one year, and more than 12 per cent if borrowed for two years.

During the hearing of this application, attention was called to the increase of interest charge, and the inadequate earnings to meet such increase. Witnesses for applicant testified that they expected an increase in the earnings during the current year. However, such increase in earnings is more or less uncertain.

In view of the facts as above set forth, I believe a portion of

the sum needed should be raised by an assessment upon the applicant's stock.

As the applicant states that its obligations are at this time pressing, I shall recommend that the application be granted, with the reservation that a portion of the notes herein authorized shall be paid by an assessment upon applicant's stock. I am not willing at this time to recommend such a heavy discount as applicant herein proposes, and the order will provide that the discount may not exceed \$1,000, instead of \$2,000, as requested.

I think that all of the necessities of this case will be met if this Commission authorizes, therefore, note or notes not in excess of \$29,000; from which the applicant shall realize the sum of \$28,000, on condition that the application shall assess its stockholders in a sum amounting to \$5,000 within the next twelve months, and apply the proceeds from such assessment toward the liquidation of the note or notes herein authorized.

Accordingly I recommend the following form of order:

ORDER.

Esccondido Utilities Company having applied to this Commission for authority to issue note or notes as set forth in the foregoing opinion, and a hearing having been held, and it appearing that the purposes for which it is proposed to issue said note or notes are not, in whole or in part, reasonably chargeable to operating expenses or to income,

It is hereby ordered that Esccondido Utilities Company be granted authority, and it is hereby granted authority, to issue its note or notes in a total sum not to exceed \$29,000.

The authority herein granted is granted upon the following conditions, and not otherwise:

(1) The note or notes herein authorized to be issued shall be issued for a period not to exceed two years from date; shall be sold by the applicant so as to net not less than 96½ per cent of the face value thereof; and shall bear a rate of interest not to exceed 8 per cent per annum.

(2) The proceeds from note or notes herein authorized to be issued shall be used for the following purposes, and not otherwise:

To redeem bonds	\$3,000 00
To retire note now held by the First National Bank of Escondido	5,000 00
To retire note now held by W. S. Sheperdson not to exceed	16,000 00
To pay floating indebtedness	1,449 53
To defray cost of improvements of present system (Schedule 2, Sec. 1)	2,473 50
Balance	76 97
Total	<u>\$28,000 00</u>

(3) The note or notes herein authorized to be issued shall be issued only after the board of directors of Escondido Utilities Company shall have filed with this Commission a statement in writing to the effect that an assessment will be levied upon the stock of the applicant herein during the calendar year 1915 in a total sum not less than \$5,000, and that such sum as may be realized from said assessment shall be applied toward the liquidation of indebtedness represented by the note or notes herein authorized to be issued.

(4) It is further ordered that the applicant be granted authority, and it is hereby granted authority, to pledge its first-mortgage 6 per cent gold bonds as collateral security for the note or notes herein authorized to be issued, in such ratio that the face value of the note or notes issued shall be not less than $66\frac{2}{3}$ per cent of the face value of the bonds pledged as collateral for such note or notes.

(5) The bonds herein authorized to be pledged are authorized to be pledged for the specific purposes named, and after such issue shall be returned to applicant's treasury and issued thereafter only upon the order of this Commission.

(6) Escondido Utilities Company shall keep separate, true, and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the note or notes hereby authorized to be issued; and on or before the 25th day of each month the company shall make verified reports to the Commission, stating the sale or sales of said note or notes during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's general order No. 24, which order, in so far as applicable, is made a part of this order.

(7) The authority herein granted shall apply to such note or notes as shall have been issued on or before December 31, 1915.

(8) The authority herein granted is conditioned upon the

payment by the applicant of the fee prescribed under the public utilities act.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

CALIFORNIA RAILROAD COMMISSION.

IN RE APPLICATION OF WM. G. HENSHAW AND RIVERSIDE, RIALTO, & PACIFIC RAILROAD COMPANY.

[Application No. 1496; Decision No. 2108.]

Sale — Railroad property — Security issues — Value of property covered by — Earnings.

An individual owning and operating a railroad was authorized to transfer the same to a railroad company incorporated for that purpose, and the company was authorized to issue in payment therefor \$300,000 par value of its stock and \$200,000 par value of 6½ per cent promissory notes secured by mortgage covering all of the property, where from findings in a previous proceeding involving the same property it appeared that the reproduction cost less depreciation of the property was \$430,052.55, and that the net earnings of the railroad were sufficient to provide for the notes without impairing its capital or efficiency, and without necessitating increased rates.

[January 29, 1915.]

APPLICATION for authority to issue securities in exchange for railroad property; granted.

REPORT OF THE COMMISSION.

Loveland, Commissioner: This application shows that applicant, Wm. G. Henshaw, is the owner of and is engaged in the business of operating a certain street interurban and commercial railroad extending from a point within the city of Riverside, in the county of Riverside, state of California, *via* the village of Bloomington, in the county of San Bernardino, in said state, to a point within the city of Rialto, in said county of San Bernardino, state of California, said street interurban and commercial railroad being commonly known as the Crescent City Railway, more particularly described and shown upon a map filed with the Commission to which reference is hereby made.

The application further shows that the Riverside, Rialto, & Pacific Railroad Company, which has joined in this application, is a corporation organized and existing under the laws of the state of California, as shown by certified copy of its articles of incorporation, filed in the office of the secretary of state of California, a copy of said certified copy being filed with this Commission; that said Crescent City Railway consists of all that certain real and personal property described in a copy of the deed thereof filed with this Commission marked "exhibit A," and filed with this application; that the present value of said property is not less than \$500,000; that applicant said Wm. G. Henshaw has, since the 26th day of December, 1912, and prior thereto, owned, operated, and maintained said Crescent City Railway as an individual; that applicant said Wm. G. Henshaw now desires to continue the ownership, management, and operation of said railroad, but to use as a means for continuing said ownership, management, and operation of the above-named Riverside, Rialto, & Pacific Railroad, and to that end desires to transfer all of said railroad and its equipment through and by means of a deed, properly executed and delivered by him, in the form of said "exhibit A," to said Riverside, Rialto, & Pacific Railroad Company, the consideration therefor being the issue by said Riverside, Rialto & Pacific Railroad Company to said Wm. G. Henshaw, and the other incorporators named in the articles of incorporation thereof, of 3,000 shares of its authorized capital stock of the aggregate par value of \$300,000, and the payment by said Riverside, Rialto, & Pacific Railroad Company to the said Wm. G. Henshaw of the sum of \$200,000 in lawful money of the United States.

That of the said shares of stock it is desired that one share be issued to and held by Tyler Henshaw, one share issued to and held by Harry Chickering, one share issued to and held by Wm. H. Metcalfe, one share issued to and held by Wm. Lees; and the remaining 2,996 shares, or such part thereof as may be authorized by the Railroad Commission of the State of California, be issued to and held by the said Wm. G. Henshaw, who, with Tyler Henshaw, Harry Chickering, Wm. H. Metcalfe, and Wm. Lees, will be directors of said corporation, the said Wm. G. Henshaw to continue in the management and control of said corporation and through it to control and manage the said railroad.

The application further shows that on December 3, 1914, the Railroad Commission of the State of California found as a fact that the reproduction cost less depreciation of the operative property of said Crescent City Railway was, on the 30th day of June, 1914, the sum of \$430,052.55, and applicants allege that the reproduction cost less depreciation of said railroad is now more than said sum.

Applicant the Riverside, Rialto, & Pacific Railroad Company asks permission to borrow the sum of \$200,000 to be used in partial payment of the purchase price of said railroad, as hereinbefore set forth, and to repay the same in accordance with the tenor of the promissory notes set out in the copy of the mortgage attached to the application and marked "exhibit B," and to secure the payment of said promissory notes by a mortgage, in the form of said copy attached to the application and marked "exhibit B," of all of the property and equipment of said railroad therein described, said mortgage to be given to the Anglo-California Trust Company of San Francisco to secure the payment of certain notes payable two and one-half years from date thereof at $6\frac{1}{2}$ per cent per annum, said notes to consist of one hundred notes numbered 1 to 100, inclusive, of the denomination of \$1,000 each, and twenty notes, numbered 101 to 120 inclusive, of the denomination of \$5,000 each.

It appeared at the hearing that the net earnings of said railroad for eighteen months ending June 30, 1914, were \$84,572.70, and that the freight and passenger traffic of said railroad and the net revenues to be derived therefrom will, in all probability, continue to increase, and that the earnings of said railroad will annually exceed the earnings of said railroad for the year ending June 30, 1914, and that said railroad company can easily pay the interest on said indebtedness, which it now asks permission to create, without impairing its capital or its efficiency as a common carrier, and without necessity for increasing its charges for freight or passenger service to the public, and can refund the principal of said indebtedness at maturity, or such part thereof as shall then be unpaid, without impairing its efficiency or increasing its charges to the public.

A full and accurate description of the said railroad, its organization, construction, and operation, its revenues and expenses,

its original cost, its reproduction cost, and its reproduction cost less depreciation, may be found in the opinion and findings of this Commission made in the matter of the Commission's investigation into the value of the property of Wm. G. Henshaw, doing business as a common carrier under the name and style of Crescent City Railway in case No. 411, made and filed the 3d day of December, 1914, which opinion and findings are hereby made a part of this opinion and order for the purpose of giving a recital of the facts and statements therein set forth.

The application further shows that a financial statement of said Wm. G. Henshaw, acting as such railroad corporation, prepared as of the 1st day of January, 1915, was attached to and made a part of the application and marked "exhibit C."

Accordingly I submit the following order:

ORDER.

This proceeding having come on regularly for hearing, and the Commission being duly advised, and being of the opinion that the application herein should be granted,

It is hereby ordered that Wm. G. Henshaw be and he is hereby authorized to transfer to the Riverside, Rialto, & Pacific Railroad Company the property comprising the Crescent City Railway, which property is set forth in detail in the inventory attached to the application and marked "exhibit A;" and

It is further ordered that the Riverside, Rialto, & Pacific Railroad Company be, and it is hereby, authorized to issue 3,000 shares of its capital stock, in the aggregate par value of \$300,000, —this stock to be issued, one share to Tyler Henshaw, one share to Harry Chickering, one share to Wm. H. Metcalfe, one share to Wm. Lees, and the remaining 2,996 shares to Wm. G. Henshaw; and

It is further ordered that the Riverside, Rialto, & Pacific Railroad Company be, and it is hereby, authorized to issue promissory notes in the aggregate face value of \$200,000, one hundred of said notes to be for the face value of \$1,000 each, numbered 1 to 100 inclusive, and twenty of said notes to be for the face value of \$5,000 each, numbered 101 to 120 inclusive, said notes to be payable two and one-half years from date, and to bear interest at the rate of 6½ per cent per annum, payable semiannually.

The stock and notes herein authorized to be issued shall be issued in exchange for all of the property of the Crescent City Railway herein authorized to be transferred.

It is further ordered that the Riverside, Rialto, & Pacific Railroad Company be, and it is hereby, authorized to execute a mortgage substantially in accordance with the form of mortgage attached to the application in this proceeding and marked "exhibit B," which mortgage shall cover all of the property of the Crescent City Railway herein authorized to be transferred to said Riverside, Rialto, & Pacific Railroad Company, said mortgage to be executed as a security for the notes which said company is herein authorized to issue.

The Riverside, Rialto, & Pacific Railroad Company shall keep a separate, true, and accurate account, setting forth the fact of the issuance of stock or notes in accordance with this order, stating the amount of such issue, the date of issuance, and the consideration received therefor, and shall, on or before the 24th day of each month, make a verified report to the Commission, setting forth the facts in accordance with the Commission's general order No. 24, which in so far as applicable is made a part of this order.

This order shall not become effective until the fee due under § 57 of the public utilities act has been paid.

The authority herein granted to the Riverside, Rialto, & Pacific Railroad Company to issue stock and notes shall apply only to such stock and such notes as are issued on or before June 30, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

MICHIGAN RAILROAD COMMISSION.

LAKE SHORE STONE COMPANY

v.

ANN ARBOR RAILROAD COMPANY ET AL.

[D-833.]

Rates — Railroads — Agricultural limestone.

Pulverized limestone used exclusively for agricultural purposes should be granted a reasonably low freight rate.

P.U.R.'15A.—48.

Rates — Railroads — One or more line haul.

A reasonable increase over a freight rate allowed in a previous order for a strictly one-line haul may be allowed in a rate which is to apply alike, whether for one-line haul or more.

Rates — Railroads — Agricultural limestone — Marl.

Railroads were ordered to cancel their tariffs or items in tariffs naming a rate for the transportation of agricultural limestone or ground or natural marl, and to issue and make effective tariffs for such commodities not to exceed 55 per cent of the current sixth class.

[February 9, 1915.]

PROCEEDING to fix certain commodity freight rates.

Appearances: Mr. E. L. Ewing for complainant; Mr. Frank E. Robson, Attorney, Michigan Central Railroad Co., Lake Shore & Michigan Southern Ry. Co., Detroit & Charlevoix R. R. Co., Chicago, Kalamazoo & Saginaw Ry. Co.; Mr. W. J. Kelly, Chief Clerk, Gen. Frt. Dept., Grand Rapids & Indiana Ry. Co.; Mr. R. P. Paterson, Asst. Gen. Frt. Agt., Pere Marquette R. R. Co.; Mr. W. H. Spicer, Division Frt. Agt., Grand Trunk Western Ry. Co., Detroit, Grand Haven & Milwaukee Ry. Co., Toledo, Saginaw & Muskegon Ry. Co.; Mr. W. G. Mac-Edwards, General Frt. Agt., Detroit & Mackinac Ry. Co.

OPINION.

Glasgow, Commissioner: Complainant is a Wisconsin corporation duly authorized to transact business in Michigan, with its principal office located at Milwaukee, Wisconsin, and with a plant at Muskegon, Michigan; is engaged in the business of manufacturing and marketing crushed and pulverized limestone, —the crushed for use in the construction of roads, and the pulverized for agricultural purposes.

On June 27, 1914, complaint was filed alleging that the several defendants were charging an excessive and unreasonable rate for the transportation of agricultural limestone between points in Michigan, and that said rates were excessive and unreasonable in that they exceeded 50 per cent of the sixth-class rate in effect; the only exception to the above being the rate in effect by defendant Pere Marquette Railroad Company from Muskegon to points on its own line, and which rate of 50 per cent of sixth class was made effective upon an order of the Commission after hearing.

The prayer of complainant is that the several defendants be required to make effective over their respective lines between all points in Michigan for the transportation of agricultural limestone in closed cars a rate that shall not be in excess of 50 per cent of the current sixth class.

For answer defendant companies contend that 50 per cent of the current sixth class rate would not provide sufficient revenue, and that 60 per cent is required; that complainant has failed to show that 50 per cent is sufficient, or to sustain the allegation that 60 per cent is excessive; that the commodity is one requiring a more expensive equipment for its transportation than does crushed stone for road construction; is a higher grade and more valuable commodity; that the minimum of 60,000 pounds per car, which complainant contends is necessary to facilitate its sale and use, results in a too low per car earning under the application of a rate of 50 per cent of sixth class.

It is contended that the present crushed-stone rates are higher than 50 per cent of sixth class, and if such rate is applied to the transportation of agricultural limestone in closed cars it will result in a decreased earning.

FINDINGS OF THE COMMISSION.

An examination of the tariffs of the several defendants discloses that their crushed-stone rates vary from 15 per cent above to 20 per cent below 50 per cent of the sixth class, thus destroying their value as a standard of measurement of the reasonableness of a rate for the transportation of agricultural limestone, and, if to be relied upon at all, rather leads to the conclusion that to apply 60 per cent of the sixth class would, in a great majority of shipments made, prove an unreasonable and excessive rate. The greater per car earning on crushed stone referred to, when such occurs, is due to the application of the higher minimum to open equipment.

The Commission's reasons why it believes pulverized limestone used exclusively for agricultural purposes should be entitled to a reasonably low rate are fully set forth in *Lake Shore Stone Co. v. Pere Marquette R. Co.* D-687, M. R. C. Orders & Opinions vol. 2, No. 4, p. 78, and are to be considered in connection with this case.

At the time the Commission issued its order in the above case it believed that 50 per cent of the then sixth-class rate for the transportation of agricultural limestone in closed cars was consistent with the then prevailing conditions for a one-line haul. The Commission is of the opinion, however, that a service requiring a two or more line haul is more expensive, and believe additional compensation might very properly be allowed, but in view of complainant's objection and defendants' expressed wish that whatever rate should be named would be one applying alike, whether for one line haul or more, the Commission is willing to name a rate which will be so applied.

Complainant contends that the recent advance in the sixth-class rate is sufficient to cover any increase in the expense of performing the service over what it was when 50 per cent of sixth class was determined as a reasonable rate. However, it must be obvious that whatever advantage such increase was to the defendants, the application of 50 per cent of the same would allow them but one half of such benefit, even though the service was confined to a one-line haul.

In view of recent developments and additional information received, and to cover the additional expense of more than one-line haul in making delivery, the Commission believes a reasonable increase over the rate allowed in D-687 for a strictly one-line haul may be allowed without unduly burdening the manufacturers and distributors of agricultural limestone, or materially interfering with its sale and use, and still be in harmony with the principle stated in the opinion in D-687.

The following table will suffice to show what increased earnings per car of 60,000 pounds minimum will result from the application of 55 per cent of sixth class:

Miles	Old Sixth Class Rate Advanced 5 Per Cent	Fifty Per cent	Fifty-Five Per cent	Increase
25	\$1.06	\$15.90	\$17.40	\$1.50
50	1.36	20.40	22.40	2.00
75	1.48	22.20	24.30	2.10
100	1.68	25.20	27.72	2.52
125	1.78	26.70	29.37	2.67
150	1.90	28.50	31.35	2.85

The record shows that the application of the minimum of

60,000 pounds to closed cars except where the marked capacity of the car furnished is less, when such marked capacity would govern, is satisfactory to all parties.

When the order in D-687 was issued it required that ground or natural marl should be granted the same rate and minimum as agricultural limestone. It will, therefore, be understood as so treated in this instance.

In view of the rate per order this day issued to be made effective for the transportation of agricultural limestone and marl being in excess of that named in D-687 applying to defendant Pere Marquette Railroad Company for the term of two years from its date, the cancellation of the tariff carrying such rate will be understood to be required by the order issued in this case.

The several defendant companies will, therefore, cancel their tariffs or items in tariffs naming a rate for the transportation of agricultural limestone or ground or natural marl, and issue and make effective tariffs naming a rate for the transportation of such commodities which shall not exceed 55 per cent of the current sixth class, and an order in accordance with the above will this day issue.

Lawton T. Hemans, Chairman, C. L. Glasgow, Commissioner, C. S. Cunningham, Commissioner.

PENNSYLVANIA PUBLIC SERVICE COMMISSION.

SLATE BELT TELEPHONE & TELEGRAPH COMPANY

v.

BLUE MOUNTAIN TELEPHONE & TELEGRAPH COMPANY.

[Complaint Docket No. 156.]

Pleadings — Amendment.

A pending complaint may be amended during the hearing, upon agreement of counsel of both parties interested, so as to have a matter germane to the proceeding brought to the attention of the Commission, in the form of a proper petition, the respondent to the complaint becoming the petitioner.

Ordinance — Approval by Commission.

An ordinance regularly enacted, but not duly published and posted prior to the effective date of the public service company law, must be approved by the Commission before operations thereunder are begun.

Monopoly and competition — Certificate of public convenience — Construction and operation without.

A certificate of public convenience was issued to a telephone company where, by virtue of its charter and duly enacted legal ordinances in a certain borough, it had without protest expended over \$50,000 in the construction of a telephone system in such borough and in adjacent boroughs, although the construction in the latter was unlawful, owing to its failure to secure the Commission's approval of its ordinances before beginning operations.

Monopoly and competition — Certificate of public convenience — Effect of refusing.

A certificate of public convenience was issued to a telephone company to maintain and operate its telephone system in localities where its plant had been constructed and operation begun, without the approval by the Commission of the ordinances issued to it, where it appeared that the Commission had no power to restrain such company from maintaining and operating its plant, in a portion of its chartered territory, which portion contained such a limited field of population as to make impossible the conduct of a successful plant, and would result, therefore, in practically destroying the investment.

Monopoly and competition — Certificate of public convenience.

A certificate of public convenience was issued to a telephone company to maintain and operate its telephone system in localities where its plant had been constructed and operation begun, without due approval by the Commission of the ordinances issued to it, where it appeared that the lines of such company formed the only means of direct communication between 975 subscribers of a local telephone company and subscribers at other important points within a radius of 50 miles of such local company, another competing company formerly covering this radius, having withdrawn its connections, except upon payment of long-distance tolls, and where it appeared further that the refusal by the Commission of such a certificate would, under the circumstances, indirectly sanction the method employed by such competing company, to establish a monopoly of the telephone business in this locality.

Service — facilities for intercommunication.

The future development of the telephone service will demand that every local community, however small, shall be given the opportunity to communicate by telephone with the state at large, and the state at large with every local community, whenever circumstances will permit such co-operative service.

[January 8, 1915.]

COMPLAINT as to wire crossings, discrimination in rates and

unlawful occupation of territory; dismissed; certificate of public convenience issued.

Appearances: William S. Kirkpatrick and H. D. Maxwell for the complainant; Joseph M. R. Long and J. Davis Brodhead for the respondent.

Brecht, Commissioner: On the 2d day of March, 1914, the Slate Belt Telephone & Telegraph Company filed a complaint with this Commission against the Blue Mountain Telephone & Telegraph Company, alleging in substance that the said Blue Mountain Telephone Company had crossed the lines of the complainant "in a number of instances" . . . "to the injury and damage of complainants and in violation of general order No. 2 of the Public Service Commission," that the Blue Mountain Company had been discriminating in its method of doing business by granting preferential rates to some of its subscribers, and that the said corporation had been operating unlawfully in a territory already occupied by another company giving adequate service at reasonable rates.

A hearing was held before the Commission on the matter on the 8th of May following, and the testimony of a number of witnesses taken. The evidence submitted at this hearing related chiefly to the questions of crossing the lines of the Slate Belt Company by the respondent company, the matter of preferential rates alleged to have been offered by the Blue Mountain Company to some of its patrons, and the character of the plant owned and operated and the service furnished by the respective parties in interest.

From the record it appears that there was only one crossing constructed across the lines of the Slate Belt Company after January 1, 1914, which crossing was pronounced satisfactory to his company by the president of the Slate Belt Telephone & Telegraph Company. All the other crossings referred to in the testimony appear to have been made before that date, and constructed with respect to clearance and pole attachments in a safe and satisfactory manner. Should any of the said crossings, however, prove to be defective or otherwise improper, their faulty construc-

tion may be brought to the attention of the Commission at any time upon complaint, and the trouble corrected.

The testimony offered to show the granting of preferential rates was not sufficiently explicit to substantiate the charge, nor even well enough founded to indicate that any serious thought had ever been given to the matter by the management of the company involved. In the matter of plant construction and operating efficiency it is shown by the testimony that the Blue Mountain Telephone & Telegraph Company had installed a modern switchboard, copper wires and cables, and given a prompt and satisfactory service.

After the aforesaid hearing had been in progress practically an entire day, and very considerable testimony taken respecting the legal right of the respondent company to establish, maintain, and operate a telephone system in the territory affected, it appeared that the respondent was operating in several boroughs under ordinances that were passed subsequently to July 26, 1913, and should therefore have obtained the consent of the Public Service Commission before attempting to enter upon the streets and highways of the boroughs in question to construct a telephone system. When this point seemed to be clearly established at the hearing, it was suggested by the Commission, and agreed by counsel of both parties in interest, to amend the complaint then pending so as to have the matter brought to the attention of the Commission in the form of a petition from the Blue Mountain Telephone & Telegraph Company for certificates of public convenience to enter the various boroughs where ordinances were passed after the public service act went into effect.

Accordingly on the 1st of October, 1914, the Blue Mountain Telephone & Telegraph Company filed a petition asking the Public Service Commission to grant it certificates of public convenience for the purpose of "constructing, maintaining, operating, buying, and leasing telephone and telegraph lines" in the boroughs of Pen Argyl, Windgap, Roseto, and East Bangor, all located in the county of Northampton, Pennsylvania. Ordinances had been regularly enacted, published, and posted as required under the law by petitioner in all the aforesaid boroughs as follows: In the borough of Pen Argyl the ordinance granting petitioner the right to exercise its corporate powers within the limits

of said borough was passed on the 15th day of July, 1913, but the ordinance not being duly published and posted before July 26, 1913, the day when the public service company law went into effect, which required the approval of contract between a public-service company and municipal corporation by this Commission, a supplement to said ordinance was passed on the 6th of July, 1914, complying fully with the requirements of the law and containing the stipulation required by the Public Service Commission; in the borough of Windgap the ordinance was passed on the 2d day of June, 1913, but not being published and posted as required by law until the month of September following, the act of July 26, 1913, made it necessary to enact and pass a supplement to the said ordinance, which was done accordingly, complying with all requirements, on the 8th day of June, 1914; in Roseto the ordinance was passed on July 17, 1913, and a supplement thereto on the 5th of May, 1914; in the borough of East Bangor the ordinance was passed by its council on the 20th of June, 1913, and the resolution amending the ordinance on the 4th of May, 1914.

A protest was entered by the Slate Belt Telephone & Telegraph Company against the approval of the petition by the Commission, alleging that the protesting company already occupies the given territory with a telephone system, that the protestant is giving satisfactory service, and that if permission would be granted to petitioner to enter a territory so limited in area and population, the competition resulting therefrom would seriously injure, if not destroy, the property values of the Slate Belt Company.

The Slate Belt Telephone & Telegraph Company, it appears, was incorporated in April, 1896, for the purpose of providing telephone service in certain specified portions of the counties of Northampton, Monroe, and Lehigh. It began operations at once by taking over an existing telephone line which had been built and operated by a private individual. Since then it has made some additions to plant facilities, rebuilt portions of its lines, and purchased a new switch board and other minor equipments. On May 1, 1914, it had 1,071 telephones installed and a capital investment of \$100,000 in its plant, of which \$50,000 is carried as stock and \$50,000 as bonded indebtedness bearing 6 per

cent interest. It declared no dividend prior to March 1, 1913, but on that date, and since then, it paid a semiannual dividend of $2\frac{1}{2}$ per cent. Its lines of wires are chiefly confined to what is known as the slate region, and connect the towns of Bangor, Nazareth, Pen Argyl, Windgap, Easton, and a few other places of minor importance. Its service between Bangor, Pen Argyl, and Easton has been more or less congested at times, and was not regarded as adequate or satisfactory by some of its patrons. The long-distance business of the protestant company is transmitted over the lines of the Bell Telephone System by traffic agreement.

On the 15th of March, 1913, the Slate Belt Company established a toll charge over all its local lines, which action met with a serious protest from the citizens of Bangor, Pen Argyl, and Portland. A concerted effort was made by its subscribers from these towns to prevail upon the Slate Belt Company to cancel the proposed toll rates, and to make in lieu thereof, if the revenue derived from the business was insufficient for operating purposes, an advance in the regular service charges. Failing in their object, the protesting subscribers then took steps to organize a new telephone company, and on the 20th of May, 1914, the Blue Mountain Telephone & Telegraph Company was incorporated and authorized by its charter to build telephone lines from Bangor through Pen Argyl and adjoining towns in the slate region to the city of Easton, and from the aforesaid boroughs of Northampton county into Lehigh county to the city of Allentown, and from several points in Northampton county by way of the Delaware Water Gap to Stroudsburg in Monroe county, thus obtaining letters patent to enter practically the same field in which the Slate Belt Company has been operating.

In the application of the petitioner it is recited that the new company has a capital stock of \$50,000, divided into 2,000 shares of the par value of \$25 each; that of the aforesaid shares there were "subscribed to the date of this petition 437 shares, divided among 149 stockholders, residing in the county of Northampton . . . and fully paid into the treasury of the said company;" that in pursuance of the powers and privileges vested in the said Blue Mountain Company the borough of Bangor passed an ordinance on the 16th of June, 1913, permitting the said company

to enter the said borough and occupy its streets and highways for the purpose of constructing, maintaining, and operating a system of telephone lines; that in further pursuance of its charter privileges and rights, and "by virtue of the ordinance of the borough of Bangor" and "similar ordinances" granted to the said company about the same time by the boroughs of Pen Argyl, Windgap, and East Bangor, the Blue Mountain Telephone & Telegraph Company thereafter and prior to January 1, 1914, proceeded to construct its lines of poles and wires in the boroughs of Bangor, Pen Argyl, and Windgap, its poles and trunk lines from the borough of Bangor to Pen Argyl, thence to the borough of Windgap, and thence to the village of Rosecommon, in Monroe county; and "poles and four trunks from the borough of Windgap, toward the city line of the city of Easton, which said line to the said city was completed shortly after said day," viz., January 1, 1914.

The following facts were developed at the hearings held in this case: The territory known as the slate region in which both parties in this proceeding are operating is a comparatively small district containing about from fifteen to twenty thousand people. The various boroughs within the region are in close proximity to one another, being only from a half to three miles from each other, and so closely interrelated in their social life and business interests that they form practically one community in thought and interest. Both the petitioner and the protestant have toll or long-distance connections with places lying outside of the immediate district; the Slate Belt Company connects by a traffic agreement with the Bell Telephone Company, the Blue Mountain Company by traffic arrangement with the Consolidated and a few other near-by local companies.

The ordinance passed by the borough of Bangor, giving the Blue Mountain Company the right to construct, maintain, and operate a telephone system on the streets and highways of that borough, was regularly enacted and went into effect before July 26, 1913. The Blue Mountain Telephone Company, therefore, holds a valid franchise to-day to own and operate a telephone plant in the borough of Bangor, and cannot be restrained by this Commission from exercising its vested charter rights within the aforesaid borough. The said Blue Mountain Company is also

invested with power by its charter to occupy, maintain, and operate a telephone system upon the highways of the various villages and townships in that region, enumerated in its articles of incorporation, without obtaining a certificate of public convenience from this Commission.

Some time in August, 1913, the Blue Mountain Company began the construction of its telephone plant in the borough of Bangor and along the highways of adjoining townships, through the borough of Pen Argyl, the borough of Windgap, and towards the city of Easton, expending \$53,094.45 in plant construction and plant equipment before any proceedings were instituted to question the legal character of its contract rights. Since the verbal agreement made between the parties in interest after the first hearing held in May, 1914, there has been no extension of the plant except that a few shares of stock were sold to subscribers residing in the borough of Bangor, where the petitioner has a legal contract to maintain and operate a telephone plant.

The new plant in question is constructed of the best material offered in the market for telephone service. Its wires and cables are copper, its switch board modern and of sufficient size to meet the needs of future development, and its transmission lines between the larger centers of population sufficient in number to prevent any congestion of the wires even during the hours of the day when the pressure of business is greatest. Between the boroughs of Bangor and Pen Argyl there is a 100-trunk cable enabling 100 persons to talk at one time at each end of the line; between the borough of Pen Argyl and the city of Easton there are four trunks; all the service on the lines of petitioner between local points and the city of Easton is free. Because of the limited number of free trunks operated by the Slate Belt Company between Bangor and Pen Argyl and Pen Argyl and Easton, the service is frequently congested at these points and persons are unable to transact business promptly. There are, however, toll trunks operated by the Bell Telephone Company between Bangor and Easton and Pen Argyl and Easton which the subscribers of the Slate Belt Company are permitted to use by paying toll.

At Roscommon, Monroe county, the Blue Mountain Company connects with the Stroudsburg & Bushkill Telephone

Company, a local concern operating at Stroudsburg, Mount Pocono, Delaware Water Gap, and surrounding points.

The Stroudsburg & Bushkill Company has 975 subscribers, and can reach the city of Easton since October 1, 1913, only over the wires of the Blue Mountain Company. At that time the Bell Telephone Company "discontinued and disallowed any business or conversation within a radius of 50 miles" from Stroudsburg over the lines of the local company; the said Stroudsburg & Bushkill Company, and the Slate Belt Company would not receive or transmit any message either way between Stroudsburg and the city of Easton. Since then the only line of communication by telephone between the subscribers of the Stroudsburg & Bushkill Company and the city of Easton is that of the Blue Mountain Company. The average number of calls over these lines for or from Easton in a day during the busy season is from fifty to sixty. The city of Allentown, Bethlehem, and all of the other large communities lying within a radius of 50 miles from Stroudsburg can only be reached by the Stroudsburg & Bushkill subscriber from his own telephone over the lines of the petitioner, the Blue Mountain Telephone & Telegraph Company.

By reason of its contractual relations with the Consolidated and other independent companies, the petitioner is enabled to open telephone service in the slate region to the state at large where there are over 280,000 independent telephone subscribers who could not otherwise over their own lines reach the public of the slate region, and with whom the people of the slate region could not otherwise have any direct communication by telephone.

There are several circumstances connected with the foregoing facts which, when viewed in their proper proportion and bearing, are found to be of material weight in arriving at an equitable determination of this matter. The petitioner, by virtue of its charter and a duly enacted legal ordinance in the borough of Bangor, has expended over \$50,000 for plant construction and equipment to establish and operate a telephone system upon the highways of the said borough and adjacent territory. The ordinances passed in the boroughs of Pen Argyl, Windgap, Roseto, and East Bangor, although not effective until after July 26, 1913, by reason of their not being published and

posted according to law, serve to show that the trend of public sentiment was favorable to the proposed enterprise, and that the petitioner was in substance, at least, permitted in the usual authorized way to enter those municipalities to do business.

In pursuance of its charter rights, and its franchise in the borough of Bangor, and by virtue of the aforesaid situation in the boroughs of Pen Argyl, Windgap, Roseto, and East Bangor, the petitioner expended over \$50,000 upon its telephone plant before there was any protest filed to restrain its action and prevent it from entering and occupying the territory in question. To refuse the approval of the petition now, after permitting the petitioner to invest that amount of money, would be destroying a plant investment representing one half the value of the protestant's property. And it would be doing that although the petitioner in the course of constructing its plant was proceeding, in part at least, entirely within its legal rights.

As there is no power vested in this Commission to restrain the aforesaid petitioner from constructing, maintaining, and operating a telephone plant in the borough of Bangor and other sections of the said company's chartered territory outside of the other boroughs, and inasmuch as such a limited field of population like Bangor and the outlying rural sections would make it impossible to conduct a successful plant in the telephone business, and would therefore practically destroy the investment now put into its plant by the said company, it would appear that a just and equitable view of the matter would require the approval of the petition in this proceeding.

The situation at Stroudsburg and in other towns of Monroe county where 975 subscribers of the Stroudsburg & Bushkill Telephone Company will be unable to communicate from their own telephones with Easton, Bethlehem, and other communities within 50 miles of Stroudsburg, if this petition be denied, presents a matter that should be carefully considered in reaching a conclusion in this case. The people of that county have enjoyed the social and commercial advantages of a direct service between those places for years, formerly through the Slate Belt Company, and more recently through the Blue Mountain system. To cut off that privilege now would be imposing an inconvenience and additional expense upon the aforesaid subscribers of that

section, by forcing all the long-distance business by telephone into the hands of the only active competitor, the Bell Telephone Company. In effect the Commission would sanction indirectly the method now employed by a competing concern to establish a monopoly in the telephone business conducted from Stroudsburg and vicinity to the slate regions, and the larger outlying communities like Allentown, Bethlehem, and Easton. The Blue Mountain Telephone & Telegraph Company is the only channel under present conditions through which the aforesaid service can be rendered, and it would therefore cut off all communication between those sections if this Commission were to issue an order restraining the petitioner from entering the territory in which it is seeking to operate. Since the petitioner has already expended upon the construction of its plant in that territory upwards of \$50,000, and is supplying the only connecting link in the telephone service of a number of communities, the Commission would not be warranted to issue such an order.

There is no reason apparent why the 283,000 and odd independent telephone subscribers in the state who can reach the slate region, and who can be reached from that region over the wires of the Blue Mountain Company through present or future traffic arrangement, should not be permitted to get that service. The future development of the telephone service will demand that every local community, however small, shall be given the opportunity to communicate by telephone with the state at large, and the state at large with every local community, whenever circumstances will permit such co-operative service.

In view, therefore, of the foregoing facts and circumstances the Commission is of the opinion that the petition in this proceeding ought to be approved, and the certificates of public convenience issued accordingly.

ORDER.

The Slate Belt Telephone & Telegraph Company having filed a complaint against the Blue Mountain Telephone & Telegraph Company, to which complaint an answer was filed and a hearing held, and the Commission having with the consent of the parties taken up, as a result of said complaint, answer, and hearing, the applications referred to in the finding and determination

in this case, and the said complaint and application having thereafter been duly submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed of record a report containing its findings of fact and conclusions on the matter complained of, as well as on the applications mentioned, which report is hereby referred to and made a part hereof:

Now, it is ordered that the complaint of the Slate Belt Telephone & Telegraph Company be, and the same hereby is, dismissed, and that the applications of the Blue Mountain Telephone & Telegraph Company mentioned in said report be, and the same hereby are, approved and the certificates of public convenience directed to issue.

By the Commission, Frank M. Wallace, Acting Chairman.

PENNSYLVANIA PUBLIC SERVICE COMMISSION.

IN RE BOROUGH OF AVOCA.

[Municipal Contract Dockets 257 and 258.]

Monopoly and competition — Municipal contract — Competing utility.

A contract between a municipality and a recently organized partnership for the supplying of current at a less sum than that at which it is being furnished by an existing company, such partnership apparently being without means to carry out its agreement, will not be approved where the municipality is too small to support two companies and the existing utility is furnishing adequate service at reasonable rates.

Consolidation and merger — Effect — Commission — Jurisdiction.

The Commission has no jurisdiction to determine the legal effect of a purchase by one public service corporation serving a certain territory, of the rights, privileges, and franchises of another company serving a different territory, upon the right of the purchasing company to supply a district beyond the limits of its own charter.

[January 21, 1915.]

PETITION for a certificate of public convenience approving franchise contract and lighting contract between a municipality and a public service corporation; dismissed.

Appearances: John R. Reap for the borough of Avoca; W. L. Pace and Robert W. Archbald for Avoca Borough Electric

Light Company; F. W. Fleitz and W. H. Warring for Scranton Electric Light Company.

Pennypacker, Commissioner: John R. Reap filed a petition setting forth that he is the solicitor for the borough of Avoca in Luzerne county, Pennsylvania, that on March 2, 1914, the council of the borough, upon an award after competitive bidding by ordinance approved by the burgess, directed that the borough enter into a contract for lighting its streets with the Avoca Borough Electric Light Company, a copartnership, for a period of five years with eighteen arc lamps and thirty-one tungsten lamps, which contract was executed July 30, 1914; that on March 2, 1914, the council passed and the burgess approved an ordinance granting to the same partnership the right, privilege, and franchise of furnishing light, heat, and power to the borough and persons, associations, and corporations therein; that the said copartnership has executed the said contract and accepted the terms of the franchise ordinance,—and prayed the Commission to fix a time for a hearing.

Against the granting of the prayer of this petition the Scranton Electric Company filed a protest setting forth that it is a corporation created April 9, 1907, under the laws of Pennsylvania, for the purpose of supplying light, heat, and power by means of electricity; that January 21, 1910, it acquired by purchase the rights, privileges, and franchises of the Standard Electric Light, Heat, & Power Company of Avoca, together with the property of that company; that the latter company, a Pennsylvania corporation, was incorporated December 15, 1907, for the supply of electricity for light, heat, and power in Avoca, and was about that time granted a franchise to enter upon the streets of Avoca with its poles and wires, and entered into a contract with the borough for ten years for the purpose of supplying light, heat, and power, and has since continuously occupied them and maintained an equipment to give adequate service at reasonable rates; that a new contract was made in 1908, which expired June 1, 1913; that the protestant maintains a distributing system of upwards of 29 miles of wire, with approximately 275 poles and 26 transformers, with meters and other appliances in a good state of efficiency, continuously in operation, and en-

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tirely adequate to supply all demands, and does so supply them; that the population of Avoca is about 4,600; that there is no public necessity for two electric light companies and not sufficient business for them, and that to permit the entry of another company would work an irreparable injury upon the respondent and confer no benefit on the inhabitants of the borough.

It will be observed at the outset that the application filed, though purporting to come from the borough of Avoca, is in reality a petition of an individual who is counsel for the borough, and that all it prays for is that the Commission fix a time for a hearing. A hearing was fixed for September 3, 1914, and therefore all that is prayed for has already been granted. For the purposes of the determination of what is no doubt the real intention of the application, the Commission will treat the petition as though it had been made by the borough, and as though an application to amend by adding a prayer for the approval and the issue of a certificate of public convenience had been granted.

The town of Avoca is a mining town occupying a territory of about a mile square, with a population of about 4,500 people, a silk factory, and some other small manufacturing establishments, and 23 licensed saloons. The Scranton Electric Company covers, with its wires, a valley extending from Forest City to Avoca, a distance of about 30 miles, and supplies current to about 20 municipalities. It has a capacity of 20,000 kilowatts, but its peak or highest load during the past year was 10,000 kilowatts, and its ordinary run is from seven to eight thousand kilowatts. During the last three years it expended upon the improvement and extension of its system about \$2,000,000, and to some extent, built it up and replaced the pole line in Avoca. It has in Avoca about 29 miles of wire, 275 poles, 26 transformers, and 420 customers. Its entire receipts from the borough for a year were \$14,771. Since January 1, 1914, it placed 25 poles and ran 27 spans of wire in Avoca connecting with 11 new consumers at an expense of \$814. Prior to expiration of the old contract on June 1, 1913, this company made a proposition to the borough to supply upon a contract for ten years, arc lights for \$60 and incandescent lights for \$20, and upon a contract for five years, arc lights for \$65 and incandescent

lights for \$22. The borough advertised for bids, whereupon the Avoca Borough Electric Light Company made a bid to supply the light at the rates of \$56.50 for arc lights, and \$19.50 for tungsten lights. The contract was awarded to this partnership, and it is this contract the Commission is asked to approve.

The Avoca Borough Electric Light Company is a copartnership, consisting of three individuals, which was organized May 3, 1913. It is not the owner or lessee of any plant. It was testified that the members were willing and able to pay any money required for its future operations, but in the bank there was not "any particular sum" to its credit. At the time the contract was awarded, it gave to the borough a certified check for \$500, and promised, but did not deliver, a bond in the sum of \$5,000 security for the performance of the contract. Since the time of the expiration of the old contract, the protestant has been supplying light to the borough upon the terms of that contract. There was testimony to the effect that the supply of light by the protestant was at times imperfect and defective, but this was disputed, and there were comparatively few complaints made to the protestant itself. A record of sums deducted for outage from the payments to the protestant was as follows:

1913	
July	\$1.10
August	1.45
September	1.45
October	3.78
November	0.55
December	2.80

1914	
January	0.80
February	None
March	3.05
April	1.38
May	2.38
June	None

The vice-president of the Harrisburg Light & Power Company testified that the rates charged by the protestant were reasonable.

Upon this state of facts, the Commission is unable to find that the approval of the proposed contract is "necessary or proper for the service" of the public, or is likely to be of permanent benefit to the people of Avoca. This borough is not of suffi-

cient size to sustain two systems of supply profitably. On the one side is a well-established and long-maintained system, with the facilities and the financial ability to furnish an adequate supply. On the other is a recently organized partnership with no plant, which has offered to supply light, heat, and power for a less sum, but, so far as the testimony shows, without any of the means which would enable it to carry out its contract. Any failure on the part of the protestant to furnish a proper supply or any charge of unreasonable rates, if supported, is a matter which can be corrected by the Commission upon its presentation to them.

It is argued for the applicant that under the authority of *Bly v. White Deer Mountain Water Co.* 197 Pa. p. 80, 46 Atl. 929, and *Re Home Electric Co.* 11 Pa. Co. Ct. p. 179, the Scranton Electric Company is confined to the borough, town, city, or district described in its charter, and has no legal right to supply light in Avoca. A like question was considered and appears to have been decided in the case of *Iley v. Springfield Water Co.* 207 Pa. p. 38, 56 Atl. 265, where it was held that a water company could acquire the right to supply a district beyond the limits of its own charter, by purchase from another corporation having such rights. In any event, the Commission finds the Scranton Electric Company in the exercise of an accepted right to supply the borough of Avoca, continued without objection for many years, through a purchase from and merger with the Standard Electric Light, Heat, & Power Company, which merger was authorized and permitted by the properly constituted authorities of the state. The Commission is of the opinion that it is not the proper tribunal to determine the legality and legal effect of such merger.

For these reasons it is the opinion of the Commission that the proposed contract ought not to be approved, and that its application ought to be dismissed. An order will accordingly issue.

ORDER.

This case being at issue upon petition and protest filed, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been

had, and the Commission having, on the date hereof, made and filed of record a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

Now, it is ordered that the application in this proceeding be, and the same hereby is, dismissed.

By the Commission, Samuel W. Pennypacker, Chairman.

PENNSYLVANIA PUBLIC SERVICE COMMISSION.

IN RE PETITION OF LEHIGH NAVIGATION ELECTRIC COMPANY.

[Municipal Contract Docket No. 314.]

Contract — Ordinance — Permission to erect wires across highway.

An ordinance of a municipality granting to an electric company the right to erect wires over a highway, which provides that the company shall file its written acceptance thereof, together with an indemnity bond, and pay a stipulated sum per annum, is upon compliance therewith a contract between a public service company and a municipal corporation, which requires the approval of the Commission and a certificate of public convenience.

Monopoly and competition — Certificate of public convenience — Authority to cross highway not authority to serve municipality.

The approval of an ordinance granting a municipality the right to erect wires over a highway for the purpose of furnishing service to a neighboring township will not be withheld and a certificate of public convenience denied on the theory that such action will enable the company to furnish service in such municipality, to the disadvantage of another company already furnishing adequate service therein.

Monopoly and competition — Certificate of public convenience — Conditional grant.

An ordinance of a municipality granting an electric company the right to erect wires over a highway was approved, and the certificate of public convenience granted on condition that such action should not be construed as a grant of authority to furnish service in such municipality.

[January 22, 1915.]

PETITION for approval of an ordinance contract of a municipality authorizing a public service corporation to erect wires over a public highway; granted.

Appearances: William J. Turner for petitioner; John R. Geyer for protestant.

Tone, Commissioner: The Lehigh Navigation Electric Company has filed an application for the approval of an ordinance of the borough of Wind Gap granting it the right to erect high tension wires over and across Broadway in said borough. Said crossing also involved the crossing of the facilities of the Pennsylvania Utilities Company.

Notice of the construction of this latter crossing had previously been served by the Lehigh Navigation Electric Company upon the Pennsylvania Utilities Company, October 8, 1914, under this Commission's general order No. 11, and the Pennsylvania Utilities Company thereupon filed a protest against the approval of the construction of the crossing, in which, *inter alia*, the said protestant set forth the fact that the Lehigh Navigation Electric Company had not submitted for the approval of the Commission the ordinance contract between it and the borough of Wind Gap, dated September 14, 1914, under which the municipal authority to construct the crossing in question had been obtained. This protest of the Pennsylvania Utilities Company having been filed, the above-mentioned petition for the approval of the aforesaid ordinance was presented by the Lehigh Navigation Electric Company to the Commission, and the two cases, the one for the approval of the ordinance contract and the other for the approval of the construction of the contemplated crossing over the facilities of the Pennsylvania Utilities Company, involving, as they did, closely related issues for the Commission's determination, were heard and considered together. The petition for the approval of the ordinance contract sets forth that the Lehigh Navigation Electric Company is an electric light, heat, and power company, organized December 23, 1912, by the consolidation and merger of thirty-eight electric companies, including, *inter alia*, the Excelsior Electric Company of Plainfield township, incorporated April 4, 1911, for the purpose of supplying light, heat, and power by means of electricity to the public in Plainfield township; that the petitioner has contracted to furnish electric light and power to new shops and yard facilities of the Lehigh & New England Railroad Company in Plainfield township; has

acquired the necessary rights of way thereto for its transmission lines, which are in process of erection; and that to complete the construction of said lines, it is necessary for the same to cross over Broadway street, in Wind Gap borough. The petition further states that consent of the borough to the crossing was granted in the exercise of its police power, and it is believed the ordinance is not a contract or agreement with a municipality such as was contemplated by article 3, § 2, of the public service company law. The petitioner therefore asks that such fact be determined by the Commission, and if the ordinance be considered as a contract subject to the provisions of said article 3, § 2, that a certificate of public convenience be issued.

The Pennsylvania Utilities Company filed a protest against the approval of said ordinance, stating that the transmission lines proposed to be erected by the petitioner are for the purpose of providing facilities and serving the public not only in Plainfield township, but in Wind Gap borough, Pen Argyl, Stroudsburg, and East Stroudsburg, communities now served by the protesting company and other utility companies; that there is no necessity for competing service in any of said boroughs, and no benefit will result to the public from the same; that the petitioner has a demand and market for its supply of current in the vicinity of its main power plant sufficient to exhaust the amount to be generated at said plant; that it is not necessary for the transmission lines of the petitioner to cross Broadway to reach the Lehigh & New England Railroad Company shops; that the ordinance, the approval of which is petitioned for, in effect grants permission to the petitioner to occupy the streets and highways of the borough, that municipal consent is required therefor, and for either or both of which a certificate of public convenience is necessary; that the consent given by the municipal authorities is intentionally broad enough to permit the petitioning company to contend that it is authorized thereby to do business within the borough of Wind Gap, and that it may be contended that the company is required, upon demand, to serve the public in the borough.

Wind Gap borough is located in Northampton county, has a width along the north county line of 2,000 feet, extends southerly therefrom about 8,800 feet where its width is 7,500 feet, and is

bounded on its east, south, and west sides by Plainfield township.

The route of the Lehigh & New England Railroad Company passes through Wind Gap borough from west to east about 2,500 feet south of the northerly borough line, and crosses at grade one borough street—Broadway, running north and south—at a point about 1,200 feet east of the west borough line. This railroad company has leased to the Lehigh Navigation Electric Company, the petitioner, the right to erect and maintain the poles, towers, and wire transmission lines of the electric company upon and along the right of way and property of the railroad company through Wind Gap borough and certain portions of Plainfield township. The Lehigh Navigation Electric Company and the Lehigh & New England Railroad Company are both controlled by the Lehigh Coal & Navigation Company.

The ordinance of Wind Gap borough provides that no poles or towers be placed upon any borough street. The poles and towers will be erected on and along the right of way secured therefor from the Lehigh & New England Railroad Company. The transmission wires will cross Broadway at an elevation of 49 feet above the surface thereof, and 16 feet above the highest wires now erected along said street.

The Pennsylvania Utilities Company is at present, and has been for many years, furnishing electric service to the public in Wind Gap borough, which has a population of about 1,000; and the testimony was uncontradicted that the service was adequate and sufficient, that there was no necessity for and no benefit would accrue to the public by another company being authorized to furnish service therein.

The petitioner, claiming that the ordinance under consideration is a grant or license issued under the police power of the borough, raises a question as to its being a contract or agreement between a public service company and a municipal corporation within the purview of article 3, § 2, of the act of July 26, 1913. The ordinance is an action of the borough authorities specifically in favor of the petitioning company, and contains provisions that the company file its written acceptance thereof with the borough secretary, file an indemnity bond to protect the borough against any and all claims for damages, reimburse the borough for

expenditures made in connection with the preparation and passage of the ordinance, and lastly, pay the borough \$125 per annum. The ordinance has been accepted and the payments therein called for have been made by the company, and it clearly constitutes a contract or agreement between a public service company and a municipal corporation within the meaning of article 3, § 2, of the said act of assembly.

The petitioning company under its charter is authorized to supply electric light and power to the public in Plainfield township, and to persons, partnerships, and corporations residing therein or adjacent thereto, and for that purpose to erect and maintain the apparatus necessary therefor, with the right to enter upon any public street or highway, provided that it shall not enter upon the streets of any borough until the consent of the borough council to such entry shall first have been obtained. Counsel for the petitioner maintains that the borough of Wind Gap is adjacent to Plainfield township, and that while it has not contracted so to do, it has the right under its charter to supply electricity to consumers in the borough within a reasonable area therein adjacent to the township.

The petitioner states it is not its intention to furnish service within the borough, and it requested "that any certificate that may be granted by the Commission shall distinctly provide that we shall not serve the borough of Wind Gap either as a borough or the people in it."

Counsel for the protestant contends that the petitioner, having once secured the consent of the borough to an entry upon the streets, needs no further consent from the borough to establish its plant in the borough, and that if it has any corporate right therein, it is then lawfully established in the borough, and can be compelled by any individual within the borough to supply service; and that the Commission has no authority to grant it the right to enter and at the same time deny the public the right to secure services if lawfully there. It is not believed that the facilities, property, or business of the protestant in Wind Gap borough should be in any manner interfered with by the petitioner, and the streets of the borough of Wind Gap cannot lawfully be entered upon by the petitioner for the purpose of furnishing service in said borough without further consent of the

borough councils to such entry for that purpose, and following said municipal consent, the approval thereof by this Commission.

The ordinance grants the petitioner a permit or license to erect its wires over and across Broadway at a particular and specific point. The petitioner has secured a right of way on which to erect its poles, towers, and wires through Plainfield township and Wind Gap borough, and has undoubtedly the right and authority to erect its facilities on such right of way in the borough up to each side line of Broadway street, and having the consent of the borough to erect the wire crossing over said street, and the character of the crossing of the facilities of the Pennsylvania Utilities Company being proper for the safety and convenience of the public, the Commission is of the opinion that the said ordinance No. 14 of the borough of Wind Gap dated September 14, 1914, should be approved, and the crossing as specified in the notice served by the Lehigh Navigation Electric Company upon the Pennsylvania Utilities Company, October 8, 1914, pursuant to general order No. 11, should be approved, and that certificates of public convenience should be issued accordingly; it being expressly understood, however, that the Commission by the issuing of said certificates, or either of them, expresses no approval of the use or occupation of, or entry upon, any of the streets of the said borough of Wind Gap by said Lehigh Navigation Electric Company for the purpose of furnishing service to or within the said borough, and an order will be so entered.

ORDER.

This case being at issue upon petition and protest filed, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and at the same time the notice and protest in the case of the crossing of the facilities of the Pennsylvania Utilities Company by the facilities of the Lehigh Navigation Electric Company in the borough of Wind Gap having been heard, and submitted by the parties, and the Commission having on the date hereof made and filed of record a report containing its findings of fact and

conclusions thereon, which said report is hereby referred to and made a part hereof:

Now it is ordered that a certificate of public convenience be issued, evidencing the Commission's approval of ordinance No. 74 of the borough of Wind Gap, dated September 14, 1914, granting to the Lehigh Navigation Electric Company the right to erect high-tension wires over and across Broadway street in said borough; and also that a certificate of public convenience be issued, evidencing the Commission's approval of the construction of the facilities of the Lehigh Navigation Electric Company across the facilities of the Pennsylvania Utilities Company, in accordance with the notice served upon said Pennsylvania Utilities Company on October 8, 1914; both certificates of public convenience to be subject to the condition that no approval of the use, occupation, or entry upon any of the streets in the said borough of Wind Gap by the Lehigh Navigation Electric Company is granted for the purpose of furnishing service to or within said borough.

By the Commission, Samuel W. Pennypacker, Chairman.

PENNSYLVANIA PUBLIC SERVICE COMMISSION.

IN RE APPLICATION OF THE BOROUGH OF GALLITZIN.

[Application Docket No. 334.]

Government ownership — Certificate of public convenience — Purchase of existing utility.

An agreement by a municipality to take over the mains and water lines of an existing water company, at a fair valuation, is not a necessary prerequisite to the granting to the municipality of a certificate of public convenience for the erection of a waterworks system, especially where the municipality, in addition to the approval of the Commission, must also obtain permission from the commissioner of health and the water supply commissioner, and, by proper municipal action, secure estimates of the probable cost of the system.

Government ownership — Certificate of public convenience — Inability of existing company to supply water.

A certificate of public convenience was granted to a municipality to enable it to erect a waterworks plant, where an existing company admitted its inability to provide the amount of water needed, the ques-

tion of a fair valuation of the existing company's property to be determined, if desired, at a later hearing.

[January 21, 1915.]

APPLICATION for a certificate of public convenience; granted.

Appearances: W. L. Hibbs for the petitioner; P. L. Little for the protestant.

Wallace, Commissioner: The petition in this case is made by the borough of Gallitzin, a municipal corporation situate in Cambria county and having a population of approximately 3,500 inhabitants.

The protest is filed by the Cambria County Water Supply Company. From the papers filed and evidence in this proceeding, we find the following material facts:

The Cambria County Water Supply Company is the lessee from the Gallitzin Water Company of all its property and franchises situate in the borough of Gallitzin, and the said lessor and lessee have been furnishing water in the said borough for the past twenty-five years. The Cambria County Water Supply Company is unable to furnish an adequate supply of water to meet the demands of the said borough. This inability to furnish an adequate supply of water is admitted by the Cambria County Water Supply Company, and since 1907 said Cambria County Water Supply Company has been endeavoring to secure an additional supply of water, but failed to obtain any additional supply. In order to give the inhabitants of the borough of Gallitzin sufficient water, the said borough contracted with the Summit Water Supply Company to supply for one year 50,000 gallons per twenty-four hours, using the distribution system of the Cambria County Water Supply Company to furnish said supply of water to the inhabitants. This contract with the Summit Water Supply Company expires on the 5th day of August, 1915, and by the terms of the said contract the borough must provide, or cause to be provided in a manner independent of the Summit Water Supply Company, a supply of water sufficient in all respects for all its purposes.

From the above statement of facts it is evident that the borough of Gallitzin must obtain, in the near future, an additional supply of water which cannot be furnished by the Cambria

County Water Supply Company. The main question raised by the protestant is that a certificate of public convenience granting the borough the right to erect a system of waterworks should not be issued by the Commission until the borough had agreed to take over at a fair valuation the mains and water lines of the protesting company. It, no doubt, would be very advantageous that a duplication of mains and water lines should not be made in the borough, but, under the circumstances, it does not seem just and proper that the Commission's approval of the right of the borough to construct a system of waterworks should be withheld until the company and the borough had agreed upon the price to be paid for said property of the water company. This view is strengthened by the fact that the borough, in addition to the approval of this Commission, must also obtain permits from the commissioner of health and the water supply commission, and, by proper municipal action, secure estimates of the probable cost of the system. It would be illogical to compel the borough to enter into an agreement to purchase any or all of the property of the protesting company before it knew that the proposed supply of water which it hoped to obtain would be approved by the commissioner of health and the water supply commission.

The Commission is therefore of the opinion that the petition in this case should be approved and a certificate of public convenience issued, leaving the question as to what is a fair valuation for the property of the Cambria County Water Supply Company to be determined, if desired, at a later hearing, and an order will therefore be issued.

ORDER.

This case being at issue upon petition and protest filed, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed of record a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

Now it is ordered that a certificate of public convenience be

issued, evidencing the Commission's approval of the acquisition and construction of a system of waterworks by the borough of Gallitzin in said borough.

By the Commission, Samuel W. Pennypacker, Chairman.

CALIFORNIA RAILROAD COMMISSION.

CITY OF CORONA

v.

CORONA CITY WATER COMPANY.

[Case No. 661; Decision No. 2053.]

Valuation — Rate purposes — Going concern value.

The rejection of the item of going concern value by the Commission's engineer in an appraisal of a water company's plant for rate fixing purposes was approved.

Valuation — Rate purposes — Pavement over mains.

The rejection of the item of estimated amount which it would cost now to pave over pipe lines in an appraisal of a water company's plant for rate fixing purposes was approved.

Valuation — Rate purposes — Stock held in mutual company.

The stock owned by a water company in a mutual water company which was all located on high-line ditches for which the use of pumps was necessary was given a valuation in a rate proceeding of \$1.25 per share, where it appeared that, because of the necessity of using pumps, an additional charge of \$50 was made for locating stock on the high-line ditches, and that water could be efficiently obtained for the water company's consumers only through the high-line ditches.

Return — Reasonableness — 6 per cent.

The rates of a water company were found not to be excessive, and a readjusted schedule which would somewhat increase the revenue was held warranted when its operating expenses plus an allowance for depreciation and a 6 per cent return on the value of its property exceeded its receipts, although a portion of its operating expenses were abnormally high because of a dry year.

Rates — Hydrants — Readiness to serve.

In fixing the rates to be charged for fire hydrants for cities, consideration must be taken of the fact that the size of main and water facilities must at all times be kept adequate for fire purposes in order to be ready when the demand comes.

[January 8, 1915.]

PROCEEDING to fix rates of water company.

Appearances: C. R. Freemand for complainant; W. J. Purington for defendant.

REPORT OF THE COMMISSION.

Edgerton, Commissioner: The city of Corona complains against the rates charged in the city of Corona by Corona City Water Company. The complaint also contains allegations against the quality of water of this company, but no evidence was introduced as to this, and it was admitted by the attorney for the city at the hearing that there was no real objection to the quality of the water.

In its answer defendant alleges that its present rates are unduly low, and prays they be increased.

At the hearing the company submitted an appraisal, or valuation, of its plant which shows a present value of \$142,121.30. The engineers of this Commission presented an appraisal of this property, which shows a present value of \$124,438. The difference between these two valuations lies principally in the items of going concern value and an estimated amount which it would cost now to pave over the pipe lines if they were being laid at this time. Our engineer rejected both of these items, and I think properly.

The Corona City Water Company is an offshoot of the Temescal Water Company. The latter is a mutual company serving water only to its stockholders. In order to furnish the city of Corona and its citizens with water, the defendant company was organized, all of the stock being taken by the Temescal Water Company, and 500 shares of the Temescal Water Company were conveyed to the defendant company. The water received from the Temescal Water Company as a result of this stockholding is the only source of water supply, and our engineer has placed a tentative value of \$125 per share upon the Temescal Water Company's stock owned by the defendant company. The evidence at the hearing clearly established that in the comparatively few sales that had been made of the Temescal Water Company's stock the price for such stock was about \$75 per share for what is called "low line" stock and \$125 per share for what is called "high line" stock.

It seems that the Temescal Water Company makes no distinction as to its stock, and there is no preference as between any of

its stock, but it becomes necessary to locate this stock or to fix the land upon which given stock shall produce water. In locating this stock, the Temescal Water Company has made a charge of \$50 per share for locating stock on what are called the high-line ditches, whereas no charge is made by the company for locating stock on the low-line ditch. The reason for this is that the company claims that in order to keep a sufficient supply of water running in the high-line ditches it is necessary to use pumps, and that this additional cost is represented by the \$50 per share charged for locating stock under these ditches.

The stock owned by the defendant company is located on the high-line ditches, and the testimony shows that water for the city of Corona could efficiently be obtained only through these high-line ditches.

At the hearing it was testified that practically no more mains would have to be located on account of new street work, and therefore the item of \$353, set up in the Commission's engineer's report as an annual operating expense, may be stricken out.

The receipts and expenditures of the company for the year 1913 were as follows:

Receipts.		
Commercial flat rate	\$	995 00
Commercial metered		17,784 28
Municipal fire hydrant		109 50
Street sprinkling		375 35
Sewers		240 00
Street contractors		749 79
		\$20,253 92
Expenditures.		
Annual auditing of books		40 00
Salary of secretary		900 00
Salary of manager		600 00
Additional help in office		120 00
Rent and office expense		300 00
Miscellaneous general expense		220 00
Reading meters and collecting		600 00
Meter repairs		336 00
Street department		59 00
Customer's premises		19 00
Repairs to mains		413 00
		\$3,607 00
Taxes	\$	530 00
Assessment on water stock		9,000 00
		9,530 00
		\$13,137 00
This leaves the company a net operating revenue of		\$ 7,117 00

Allowing the following items:

Depreciation	\$2,032 00	
Interest 6 per cent	7,466 00	
		\$9,498 00

— leaves the company apparently with \$2,381 less than it should receive, but attention is called to the fact that the \$9,000 paid by the Corona City Water Company to the Temescal Water Company for water in the year 1913 was an unusually large amount because that year was a dry one and an unusual amount of water was required. It cannot be expected that this sum will have to be paid each year. However, the adjustments hereinafter mentioned will increase the revenue of the company to some extent.

The rate of \$1.25 per month minimum for 800 cubic feet is approximately the same as has been found reasonable in many southern California cities of the size of Corona, but the rate schedule as a whole is not well adjusted, and I recommend that this adjustment be made even though some rates may be increased thereby.

It is difficult, if not impossible, to accurately fix a rate which should be charged for fire-hydrant rental by cities. The reason for this is that there is only an occasional use of water from the fire hydrants, yet the size of main and water facilities must at all times be kept adequate for fire purposes in order to be ready when the demand comes.

The hydrant rental heretofore paid by the city of Corona has been 25 cents per hydrant per month. Upon an investigation of rates paid in various cities throughout the state I find that out of twenty-seven cases in which the rates were investigated, only seven cities paid less than \$1 per month. I therefore recommend that the rate for 4-inch hydrants off 4-inch or larger mains shall be \$1 per month per hydrant, making no change in the rate now being paid by the city for the 2-inch hydrants.

The rate heretofore charged for water used in sprinkling streets has been \$1.50 per cart per day, which has been found to be equal to about $7\frac{1}{2}$ cents per 100 cubic feet for the water used. I recommend that the rate be fixed at $7\frac{1}{2}$ cents per 100 cubic feet.

There has been an allowance of 800 cubic feet of water for the \$1.25 minimum monthly charge, and all excess has been charged

at the rate of $7\frac{1}{2}$ cents per hundred cubic feet. I consider it advisable to make a block system for the excess, and shall recommend that the rate for the next 1,200 cubic feet in excess of the first 800 cubic feet allowed for the minimum shall be 10 cents per hundred cubic feet, with a rate of $7\frac{1}{2}$ cents per hundred cubic feet for all water in excess of 2,000 cubic feet.

The present rules and regulations should be revised, and defendant company should submit to this Commission for its approval a draft of such rules and regulations.

I submit herewith the following form of order:

ORDER.

Complaint having been made by the city of Corona against the Corona City Water Company, alleging excessive, unjust, and unreasonable rates charged for water consumed by the city and the citizens of Corona, and a public hearing having been held and the Commission being fully apprised in the premises,

The Railroad Commission of the State of California hereby finds as a fact: That the existing rates now being charged by Corona City Water Company are to the extent that they are hereinafter ordered changed, unjust and unreasonable, and it is hereby further found as a fact that the rates herein ordered to be charged by said company are just and reasonable rates.

Basing its order upon the foregoing findings of fact and the further findings of fact set out in the opinion preceding this order,

It is hereby ordered by the Railroad Commission of the State of California, that Corona City Water Company file with this Commission within a period of twenty days from the date of this order a schedule providing for the following rates for water:

\$1.25 per month minimum for the first 800 cubic feet or less.

10 cents per 100 cubic feet for all water used in excess of 800 cubic feet up to 2,000 cubic feet per month.

$7\frac{1}{2}$ cents per 100 cubic feet for all water used in excess of 2,000 cubic feet per month.

Four-inch fire hydrants off 4-inch or larger mains, \$1 each per month.

Fire hydrants of smaller dimensions than 4-inch, 25 cents each per month.

Water used for flushing sewers, \$40 per month.

Water for street sprinkling, $7\frac{1}{2}$ cents per 100 cubic feet.

The rates hereinabove found to be reasonable shall become effective February 1, 1915.

Within twenty days from the date of this order the Corona

City Water Company shall submit to this Commission for its approval rules and regulations covering the distribution of water by it in the city of Corona.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

CALIFORNIA RAILROAD COMMISSION.

IN RE APPLICATION OF FRESNO INTERURBAN RAILWAY COMPANY.

[Decision No. 2033; Application No. 1084.]

Security issues — For purposes already provided for — Contingent costs — To be met when occurring.

Permission was refused an interurban railway company to issue \$2,000 par value of capital stock and \$14,700 par value of bonds to cover cost of new equipment and administration, engineering, legal, and contingent costs during construction, where it appeared that the items in question had been amply provided for by security issues previously authorized except the item of contingent costs, which the Commission held need not be anticipated but should be met as it may occur.

Security issues — Promotion charge — Changing of nomenclature.

A promotion charge for which allowance has been made in security issues previously authorized cannot be converted into something else by a mere change of nomenclature.

Security issues — Bonds and stock — Issued proportionately.

Bonds and stock should be issued in the proportion of approximately \$2 face value of bonds to \$1 par value of stock.

[January 15, 1915.]

APPLICATION for authority to issue securities; denied.

Appearances: J. B. Rogers for applicant.

REPORT OF THE COMMISSION.

FIFTH SUPPLEMENTAL OPINION.

Loveland, Commissioner: The applicant herein is constructing a standard gauge electric line of railway between Fresno and Clovis, Fresno county, a distance of approximately 9 miles. A contract was entered into between the applicant and Mahoney Brothers for the completion of this railway line at a total cost of

\$145,000. In orders heretofore issued up to November 5, 1914, this Commission had authorized the applicant to issue \$110,000 of its first mortgage 6 per cent ten-year bonds to be sold at not less than 90 per cent of face value, and 580 shares of its capital stock of the par value of \$100 per share to be sold at not less than \$80 per share. If sold at this minimum price the result would have been as follows:

\$110,000 bonds at 90 per cent	\$99,000 00
580 shares of stock at \$80	46,400 00
Total amount to be realized	\$145,400 00

This exceeded the contract price for the road by \$400. The applicant, however, subsequently set forth the necessity of additional expenditures, and thereafter applied to this Commission on November 5, 1914, for authority to issue, in addition to the securities heretofore authorized, 20 shares of its capital stock to be sold at \$80 per share and \$14,700 of its bonds to be sold at 90 per cent of face value.

A hearing was held upon this application, and in connection with data filed it came to the attention of this Commission that the applicant had issued, for the purposes of incorporation, 100 shares of its capital stock and had received therefor \$10 per share. Thereupon, in decision No. 1990, rendered December 8, 1914, this Commission, in lieu of the 20 shares of stock and the \$14,700 of bonds applied for, authorized the applicant to issue 100 shares of stock at not less than \$80 per share to replace the 100 shares of stock which had been sold at \$10 per share. The effect of this would have been to give the applicant an additional \$7,000 with which to meet its contemplated expenditures. These intended expenditures consisted of \$4,700 for the purchase of equipment, and \$10,000 for engineering, administration, legal, and contingent costs.

Under date of December 12, 1914, Fresno Interurban Railway Company filed a supplemental application requesting that this Commission's order (decision No. 1990) authorizing 100 shares of stock to replace the shares issued for purposes of incorporation be vacated, and requesting again that authority be granted to the applicant to issue \$14,700 of its ten-year 6 per cent bonds to be sold at 90 per cent of face value and 20 shares of its capital stock to be sold at \$80 per share.

It was proposed that the proceeds from the sale of these securities should be used for the purpose of purchasing equipment to cost \$4,700, and for the payment of certain administration, engineering, legal, and contingent costs set out in detail in the sum of \$12,300. There is evident need for the equipment, and I pass, therefore, to a consideration of other items.

The applicant submits the following summary of proposed expenditures:

Administration—		
San Francisco office	\$37 50	
Fresno office	12 50	
Accountant	75 00	
Stenographer	30 00	
Stationery, stamps, etc.	15 00	
President	200 00	
		\$370 00
Legal—		
Retention fee	40 00	
Sundry filings, etc.	15 00	
		55 00
Engineering—		
Chief engineer	200 00	
Electrical engineer	75 00	
Field assistants	200 00	
Livery and sustenance	150 00	
Traveling expenses	100 00	
Sundry materials	25 00	
		750 00
Total estimated monthly expense		\$1,175 00
Total for eight months' construction period		\$9,400 00
Contingent—		
To provide for possible unforeseen contingent expense not contemplated in contract, such as additional industrial trackage, the possible crossing of Southern Pacific Company's tract, at or near Clovis, etc., say 2 per cent of contract price		2,900 00
Total		\$12,300 00

It appears to me that in view of the contract which this applicant has with Mahoney Brothers, previously approved by this Commission, there is no necessity for administration, legal, and engineering expenditures as herein presented. Contingent expense, of course, must be met if it occurs.

An examination of the items submitted by the applicant disclosed that Mr. J. B. Rogers is to be paid a salary of \$200 per month as president of this railway. In addition, it is proposed that he receive a salary of \$200 per month as chief engineer of the railway. It is also proposed that he receive a salary of \$40

per month as attorney for the railway. It is further intended that he should receive an allowance of \$100 per month for traveling expenses. This makes a total of \$540 per month to continue over a period of eight months and to be charged to the construction cost of this railway. I find that many items such as livery and sustenance would be payable on behalf of Mr. J. B. Rogers.

The Commission has previously authorized the issue of securities in connection with this project to Mr Rogers as follows:

Salary as engineer at \$600 per month for 10 months	\$6,000 00
Traveling expenses in the sum of	2,176 90
Percentage of promotion fees amounting to	4,163 33
Total	<u>\$12,340 23</u>

Other general expense items have also been authorized on behalf of Mr. J. B. Rogers. Liberal promotion allowances have also been made on behalf of others connected with this enterprise.

It is now proposed that the Commission should authorize additional compensation and expenses for Mr. Rogers in a sum between \$6,000 and \$7,000. This Commission has always been willing and ready to recognize promotion effort, but it cannot go to the extremes herein requested. A promotion charge cannot be converted into something else by a mere change of nomenclature.

As this Commission has previously given its authorization for stock sufficient to cover the cost of the equipment which the applicant now desires to acquire, further issues of securities will, of course, not be necessary for this same purpose. To this extent at least—that is, to the extent of providing for an issue of securities sufficient to cover the cost of this equipment in the sum of \$4,700—I believe decision No. 1990 of this Commission should stand.

As to the other purposes for which stock and bonds are herein requested covering administration, legal, engineering, and contingent costs, I am of the opinion that a very large proportion represents intended payments for the account of Mr. J. B. Rogers that should not be sanctioned by this Commission. As has been previously stated, such contingent expense as may arise must be met, but it need not be anticipated at this time. I am therefore of the opinion that this supplemental application should be denied.

The applicant also requests that this Commission vacate its fourth supplemental order in this proceeding in which 100 shares of stock were authorized to be sold at not less than \$80 per share to replace 100 shares of stock issued at the time of incorporation at \$10 per share. This request will be denied, but I shall recommend that the order referred to be amended so that no stock shall be issued against engineering, administration, legal, and contingent costs upon the showing so far made.

Under an agreement between Mahoney Brothers, contractors, and Fresno Interurban Railway, Mahoney Brothers have accepted the securities of the applicant in payment for services in building the line. It appears that at the time of the last hearing upon this matter, the applicant had issued a portion of the bonds authorized, but had issued none of the stock authorized by this Commission. It was the intention of the Commission that these securities should be issued together so that at any time the face value of the bonds outstanding should be not more than approximately twice the face value of the stock outstanding.

The applicant, therefore, should issue no more bonds until it shall have issued stock equal to 50 per cent in par value of the bonds outstanding, and should thereafter issue its bonds and stock in proportion of approximately \$2 face value of bonds to \$1 par value of stock.

Accordingly I submit the following form of order:

ORDER.

Fresno Interurban Railway Company having made application to this Commission under date of December 12, 1914, asking for authorization to issue 20 shares of its capital stock to be sold at \$80 per share and \$14,700 of its ten-year 6 per cent bonds to be sold at 90 per cent of face value for the purpose of providing funds for the purchase of equipment and for the payment of certain engineering, administration, legal, and contingent costs, and a hearing having been held,

It is hereby ordered for the reasons set forth in the preceding opinion that this application be, and the same is hereby, denied.

The foregoing fifth supplemental opinion and order are hereby approved and ordered filed as the fifth supplemental opinion and order of the Railroad Commission of the State of California.

CALIFORNIA RAILROAD COMMISSION.

IN RE APPLICATION OF PACIFIC GAS & ELECTRIC CORPORATION.

[Application No. 1480; Decision No. 2090.]

Security issues — Notes — Sale price — To refund previous issue — Bonds as collateral.

A gas and electric company was authorized to issue \$4,000,000 par value one-year 5 per cent gold notes to be sold at not less than 98 per cent of par, to execute a trust agreement securing the same, and to pledge \$10,000,000 par value of its bonds as security therefor, the proceeds of said notes to be used to refund a like amount of a previous issue of \$7,000,000 of notes, where it appeared that under the trust agreement \$3,000,000 of said previous issue of notes were to be paid off at once out of funds then available from the sale of preferred stock, and that one half of the \$10,000,000 of bonds would subsequently be canceled, and were to be used as collateral because of the desire that they be placed in escrow until canceled.

[January 20, 1915.]

APPLICATION for authority to issue securities; granted.

Appearances: C. P. Cutten for applicant.

REPORT OF THE COMMISSION.

Thelen, Commissioner: This is an application by Pacific Gas & Electric Company for authority as follows:

(1) To issue \$4,000,000 of one-year 5 per cent gold notes to be dated December 15, 1914, and to mature December 15, 1915.

(2) To execute to F. N. B. Close, of New Jersey, as trustee, a trust agreement to secure said issue of \$4,000,000 of notes.

(3) To issue and pledge \$5,000,000 of applicant's convertible general lien bonds as collateral security for said \$4,000,000 of 5 per cent one-year gold notes.

(4) To issue and pledge \$5,000,000 of applicant's general and refunding mortgage bonds as collateral security for said \$4,000,000 5 per cent one-year gold notes.

This Commission has heretofore given authority to the applicant to issue \$7,000,000 of one-year gold notes, and under such authorization the applicant issued and sold an issue of \$7,000,000 of one-year notes dated March 25, 1914. This Commission has heretofore also authorized applicant to sell \$12,500,-

000 of its first preferred stock. It was provided in these authorizations that a portion of the proceeds derived from the sale of this preferred stock should be used to discharge a portion of the \$7,000,000 of notes. At the hearing upon the application herein, Pacific Gas & Electric Company offered testimony to the effect that it had sold \$8,985,200 par value of the first preferred stock authorized by this Commission, and that it had collected from such sale \$4,925,239.50. The applicant offered testimony further to the effect that it had paid off \$2,897,000 of said \$7,000,000 of one-year notes heretofore authorized by this Commission, and that it had available funds with which it proposed to pay off an additional amount so that there should remain outstanding but \$4,000,000 of the \$7,000,000 of notes heretofore authorized.

As security for the aforementioned \$7,000,000 of one-year gold notes, the applicant had been authorized to pledge \$5,000,000 of its convertible general lien bonds and \$5,000,000 of its general and refunding mortgage bonds.

The applicant now proposes to put out a new issue of one-year 5 per cent gold notes of the total par value of \$4,000,000 for the purpose of refunding the \$4,000,000 of one-year notes which will remain as the unpaid portion of the \$7,000,000 of one-year notes heretofore authorized. It is the purpose, also, to allow the same amount of collateral to remain as security for the \$4,000,000 of notes as was put up for the \$7,000,000 of notes.

Pacific Gas & Electric Company proposes to sell the notes for the issue of which application is herein made, to Bond & Goodwin for 98 per cent of par value plus accrued interest. The applicant figures that the money will therefore cost it approximately $7\frac{1}{3}$ per cent. Applicant's attention was called to the fact that the amount of collateral seemed excessive, but applicant explained this on the ground that the \$5,000,000 of convertible general lien bonds would subsequently be canceled, and were to be used as collateral because of the desire that they be placed in escrow until canceled. It is the intention of the applicant to pay off a portion of these \$4,000,000 of notes through further funds received through the sale of its first preferred stock.

The notes in question are to be issued under a trust agreement marked exhibit "A," between the Pacific Gas & Electric Com-

pany and F. N. B. Close, of New Jersey, vice president of Bankers Trust Company, trustee, dated December 15, 1914.

Under the trust agreement applicant is permitted to issue notes not in excess of \$4,000,000. These notes, bearing 5 per cent interest per annum, payable June 15th, and December 15th, are dated December 15, 1914, and mature December 15, 1915.

The payment of the notes is secured by the pledge of bonds as follows:

Of the Pacific Gas & Electric Company's general and refunding bonds, series "A," bearing serial numbers M 25,431 to 30,430, inclusive, \$5,000,000; also

Of the Pacific Gas & Electric Company's general lien gold bonds of series "A," bearing serial numbers 1 to 5,000 inclusive, \$5,000,000.

The notes will be of the denomination of \$1,000 each, and will be numbered from 1 to 4,000 consecutively.

The company retains the privilege of redeeming any or all of the notes at any time after giving fifteen days' notice at not more than 100 $\frac{1}{4}$ per cent.

Under the trust agreement the Pacific Gas & Electric Company is not permitted to issue any of the notes until such time as it shall have redeemed or retired \$3,000,000 of the \$7,000,000 note issue secured by a trust agreement dated March 25, 1914.

The company agrees that so long as any of the notes secured by this agreement are outstanding it will not issue any of the general lien bonds under its general lien mortgage in addition to the \$5,000,000 general lien bonds series "A," above referred to, and will not issue any of the general and refunding bonds except in accordance with the terms of the deed of trust securing the same.

The pledged bonds shall be deposited with the Bankers Trust Company, which shall hold them subject to the order of the trustee.

The general and refunding bonds may be released by the trustee upon the deposit by the Pacific Gas & Electric Company of cash equal to 85 per cent of the par value of the bonds withdrawn.

Under the trust agreement the trustee may, and upon the request of 25 per cent of the holders in amount of the notes out-

standing shall, proceed to convert the trust estate into money if anyone of the following events happen:

(a) The appointment of a receiver or receivers of the Pacific Gas & Electric Company.

(b) Failure to pay interest on any of the notes when due.

(c) Failure to pay the principal on any of the notes when the same shall have become due.

(d) Failure to pay the principal or interest on any of the old notes, or any of the refunding bonds, or any of the general lien bonds, or any of the obligations called in the general and refunding mortgage "old obligations," or any part thereof.

(e) Failure to comply within thirty days after notice with the covenants and conditions imposed upon the Pacific Gas & Electric Company by the deeds of trust securing the general and refunding bonds or the general lien bonds.

(f) Failure to comply within thirty days after notice with the terms and conditions of this trust agreement.

I believe that this application should be granted, and submit the following form of order:

ORDER.

Pacific Gas & Electric Company having applied to this Commission for authority as follows:

(1) To issue \$4,000,000 of one-year 5 per cent gold notes to be dated December 15, 1914, and to mature December 15, 1915.

(2) To execute to F. N. B. Close, of New Jersey, as trustee, a trust agreement to secure said issue of \$4,000,000 of notes.

(3) To issue and pledge \$5,000,000 of applicants convertible general lien bonds as collateral security for said \$4,000,000 of 5 per cent one-year gold notes.

(4) To issue and pledge \$5,000,000 of applicant's general and refunding mortgage bonds as collateral security for said \$4,000,000 of 5 per cent one-year gold notes.

And a hearing having been held, and it appearing that the purposes for which applicant proposes to issue said \$4,000,000, of one-year 5 per cent gold notes are not reasonably chargeable to operating expenses or to income,

It is hereby ordered that Pacific Gas & Electric Company be granted authority, and it is hereby granted authority as follows:

(1) To issue and sell \$4,000,000 of its 5 per cent one-year gold notes, dated December 15, 1914.

(2) To execute a trust agreement with F. N. B. Close of New Jersey, trustee, to secure said issue of \$4,000,000 of notes, said trust agreement to be substantially in the form of a draft submitted by the applicant in connection with this application and marked exhibit "A," to which reference is hereby made.

(3) To issue and pledge \$5,000,000 of its convertible general lien bonds (series "A," number 1 to 5,000 inclusive) as collateral security for said \$4,000,000 of said 5 per cent one-year gold notes.

(4) To issue and pledge \$5,000,000 of its general and refunding mortgage gold bonds (series "A," numbered M 25,431 to 30,430 inclusive) as collateral security for said issue of \$4,000,000 of 5 per cent one-year gold notes.

The authority herein granted is granted upon the following conditions, and not otherwise:

(1) The \$4,000,000 of one-year 5 per cent gold notes herein authorized shall be sold so as to net the applicant not less than 98 per cent of the par value thereof plus accrued interest thereon.

(2) The proceeds derived from the sale of said \$4,000,000 of 5 per cent one-year gold notes shall be used for the purpose of refunding or discharging \$4,000,000 of applicant's indebtedness, said indebtedness being the unpaid portion of an issue of \$7,000,000 of applicant's one-year notes, dated March 25, 1914.

(3) The \$5,000,000 of convertible general lien bonds herein authorized to be pledged as collateral security shall only be used for the purpose specified, and shall thereafter be returned to applicant's treasury and canceled.

(4) Pacific Gas & Electric Company shall keep separate, true, and accurate accounts showing the receipt and application in detail of the proceeds of the sale of the notes hereby authorized to be issued; and on or before the 25th day of each month the company shall make verified reports to the Commission, stating the sale or sales of said notes during the preceding month, the terms and conditions of the sale, the moneys realized therefrom, and the use and application of such moneys, all in accordance with this Commission's general order No. 24, which order, in so far as applicable, is made a part of this order.

(5) The authority herein granted shall apply to such notes as shall have been issued and such bonds as shall have been pledged on or before June 30, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Note.—Security issues authorized.

The Commission has also authorized the following security issues:

In Re Sacramento Natural Gas Co. decision No. 2146, application No. 960, February 8, 1915, a previous order was amended so as to allow \$200,000 par value of bonds to be pledged as security for \$100,000 par value of promissory notes issued in renewal of notes theretofore authorized.

In Re Cady, decision No. 2144, application No. 1511, February 8, 1915, a \$10,000 7 per cent promissory note, payable in two years was authorized, in renewal of similar note theretofore authorized to pay for certain construction and extensions.

In Re San Joaquin Light & P. Corp. decision No. 2142, application 1198, February 8, 1915, application for authority to issue \$50,000 promissory note for period not to exceed one year was dismissed, it appearing that the authority of the Commission is not necessary to issue such a note for a period less than one year.

In Re Valley Pipe Line Co. decision No. 2143, application No. 1246, February 8, 1915, a supplemental order was issued authorizing \$375,000 par value of stock to be issued to pay for construction of pipe line, said stock being a part of an issue previously authorized, which was not to be issued until estimates of cost had been submitted.

In Re Tulare County Power Co. decision No. 2137, application No. 1181, February 6, 1915, an application for permission to renew \$200,000 par value of notes and to issue an additional note for \$100,000 was amended at the hearing so as to request permission to issue a \$50,000 one-day note and permit overdue notes to be allowed to ride by a mutual agreement. Since the application as amended did not require the sanction of the Commission, it was dismissed; but the Commission made several suggestions which, if adopted, it was stated, would tend to lessen the applicant's annual deficit; namely, that it place patrons, whether they be holders of applicant's stock or not, on the same low rate basis, that it readjust a certain unfavorable contract under which it purchased power, and that it rearrange its financing so as to lower the rate of interest paid on borrowed money.

In Re Antelope Creek & R. B. Water Co. decision No. 2141, appli-

cation No. 303, February 6, 1915, a supplemental order was made authorizing 6 per cent promissory notes aggregating \$12,000, to be used partially in renewal of notes previously authorized and the balance to reimburse treasury for capital expenditures. The order specifies that the notes may be renewed from time to time, but in no case extend beyond February 6, 1916.

In Re Humboldt Transit Co. decision No. 2122, application No. 699, February 3, 1915, a \$20,000 7 per cent promissory note, payable one day after date, secured by \$40,000 par value of applicant's 5 per cent first-mortgage bonds was authorized to take up a previous note of same amount and secured by same collateral.

In Re Southern California Gas Co. decision No. 2120, application No. 1460, February 1, 1915, promissory notes aggregating \$66,007.89 were authorized to refund notes outstanding, with permission to issue renewals maturing not later than January 31, 1916.

In Re Petaluma Power & Water Co. decision No. 2117, application No. 1473, January 30, 1915, a \$12,000 5 per cent promissory note maturing in not to exceed one year was authorized in renewal of note of like amount.

In Re San Francisco-Oakland Terminal R. Co. decision No. 2109, applications 990 and 1152, January 29, 1915, the proceeds from \$75,000 of promissory notes of a previously authorized issue of \$246,666.66 were permitted to be used for purchase of new cars, to reimburse income for expenditures for capital account and for payment of taxes, instead of purchase of cars only, as had been directed in previous order.

In Re Pacific Power Co. decision No. 2105, application No. 1265, January 27, 1915, three 7 per cent promissory notes aggregating \$76,000, payable not later than fifteen months, were authorized to be issued in lieu of 76 notes of \$1,000 face value each, previously authorized.

In Re Pacific Light & P. Corp. decision No. 2104, application No. 1331, January 27, 1915, first and refunding 5 per cent mortgage bonds of the par value of \$170,000, previously authorized to be sold to the trustee to comply with sinking-fund provisions were permitted to be sold and the proceeds used to reimburse applicant's income account for cash paid the trustee in lieu of the bonds.

In Re Hermosa Beach Water Co. decision No. 2099, application No. 1488, January 27, 1915, 6 per cent promissory notes, payable on or before January 1, 1916, to the amount of \$5,000, were authorized, the proceeds to be used to take up outstanding note of like amount.

In Re Humboldt Transit Co. decision 2089, application No. 1491, January 20, 1915, first-mortgage 5 per cent sinking fund thirty year gold bonds to the par value of \$18,000 were authorized to be pledged as security for a bond necessitated through court proceedings.

In *Re Pacific Gas & Electric Co.* decision No. 2087 application No. 1188, January 20, 1915, a supplemental order authorizing \$5,000,000 par value of general and refunding mortgage 5 per cent gold bonds maturing January 1, 1942, were authorized, the proceeds to be used to reimburse the treasury for capital expenditures and to refund \$4,000,000 of 6 per cent gold notes.

In *Re Coast Counties Gas & Electric Co.* decision No. 2085, application No. 1479, January 18, 1915, a 6 per cent \$15,000 promissory note payable not later than six months, was authorized to be used to refund a note of like amount.

In *Re Fresno Interurban R. Co.* decision No. 2078, application No. 1084, January 15, 1915, a previous order authorizing \$10,000 par value of stock was amended so as to provide that that portion of the proceeds therefrom which were authorized to be used for the payment of engineering, administration, legal, and contingent costs should not be so used until such costs or estimates of costs had been approved by order of the Commission.

In *Re San Joaquin Light & P. Corp.* decision No. 2059, application No. 992, January 11, 1915, permission was given to renew from time to time three promissory notes aggregating \$200,000, the face value of the renewal notes never to exceed the unpaid principal of the notes renewed, the interest rate not to exceed 6 per cent, and their terms not to extend beyond June 29, 1915.

In *Re San Joaquin Light & Power Co.* decision No. 2054, application No. 629, January 8, 1915, a supplemental order was made, identifying by numbers, a previous issue of \$150,000 par value of series "B" first and refunding mortgage forty years 5 per cent bonds.

In *Re Western States Gas & Electric Co.* decision No. 2050, application No. 995, January 6, 1915, first and refunding mortgage 5 per cent bonds of the par value of \$93,500 were authorized.

In *Re Valley Pipe Line Co.* decision No. 2143, application No. 1246, February 8, 1915, a supplemental order authorized \$375,000 par value of stock to be issued at not less than par.

In *Re Antelope Creek & R. B. Water Co.* decision No. 2141, application No. 303, February 6, 1915, a supplemental order authorized 6 per cent promissory notes aggregating \$12,000 to net applicant not less than par.

In *Re Pacific Light & P. Corp.* decision No. 2104, application 1331, January 27, 1915, an issue of \$170,000 par value 5 per cent first and refunding mortgage bonds was authorized to be sold at not less than 85 per cent of par.

In *Re Hermosa Beach Water Co.* decision No. 2099, application No. 1488, January 27, 1915, a \$5,000 6 per cent promissory note, payable on or before January 1, 1916, was ordered to be sold at not less than par.

In *Re Pacific Gas & Electric Co.* decision No. 2087, application

No. 1188, January 20, 1915, an issue of \$5,000,000 par value general and refunding mortgage 5 per cent gold bonds maturing January 1, 1942, was ordered to be sold at not less than 85 per cent of par.

In Re Fresno Interurban R. Co. decision No. 2078, application No. 1084, January 15, 1915, an issue of \$10,000 par value of capital stock was ordered to be sold at not less than 80 per cent of par.

In Re Western States Gas & Electric Co. decision No. 2050, application No. 995, January 6, 1915, an issue of \$93,500 par value first and refunding mortgage 5 per cent bonds was ordered to be sold at not less than 82½ per cent of par plus accrued interest.

ILLINOIS PUBLIC UTILITIES COMMISSION.

IN RE APPLICATION CHICAGO GREAT WESTERN RAIL-ROAD COMPANY.

[No. 3032.]

Security issues — Refunding of lawful obligations.

A railroad company was authorized to issue its first mortgage 4 per cent bonds to the face value of \$2,006,124.12, to reimburse its treasury for moneys expended for the acquisition of property and the construction, completion, extension of, and addition to, its facilities.

Security issues — Provision for discount or deficiency.

A railroad company was authorized to issue its first mortgage 4 per cent bonds to the face value of \$741,875.88, to provide for the discount or deficiency, if any in the amount realized from the sale of an authorized issue of bonds to refund lawful obligations incurred on the capital account.

Security issues — Bonds — Sale price.

An authorized issue of first-mortgage 4 per cent bonds of the face value of \$2,748,000 was ordered to be sold so as to net the company not less than 73 per cent of the principal and accrued interest thereon.

Security issues — Discount and commissions — Amortization.

All discounts, commissions, and expenses in connection with the approval, issuance, and sale of an authorized issue of first-mortgage 4 per cent bonds of the par value of \$2,748,000, were ordered to be amortized out of the income of the issuing company in equal annual instalments.

[February 4, 1915.]

APPLICATION for permission to issue first-mortgage fifty year 4 per cent gold bonds in the aggregate amount of \$2,748,000; granted.

By the Commission: The application aforesaid having come

on for hearing before the Commission, and the petitioner having presented such testimony and evidence as it was advised and as the Commission required, and the matters having been duly submitted for disposition, and it appearing to the satisfaction of the Commission that the allegations of the petition are true and that said Chicago Great Western Railroad Company desires to issue its first-mortgage bonds to the amount of \$2,748,000 face value, said bonds to be payable on the 1st day of September, 1959, and to bear interest at 4 per cent per annum, payable semiannually, and secured by a first mortgage upon the railroad and property of said company, a copy of which said first mortgage is filed in this proceeding and marked "exhibit B" to the application herein, the proceeds of said bonds to be used as follows:

(1) To reimburse the Chicago Great Western Railroad Company for moneys heretofore actually expended from October 1, 1912, to August 31, 1914, from income or from other moneys in the treasury of said company not directly or indirectly secured by or obtained from the issue of stock or stock certificates, or bonds, notes, or other evidences of indebtedness of said company, for (a) acquisition of property, and (b) construction, completion, extension, and improvement of or additions to its facilities, \$2,006,124.12.

(2) For the discount or deficiency, if any, in the amount realized from the sale to net not less than 73 per cent or par, not exceeding the sum of \$741,875.88. Total \$2,748,000.00.

And it appearing to the Commission that said \$2,748,000. face amount of said bonds, payable on the 1st day of September, 1959, are to be issued subject to the terms and conditions set forth in said first mortgage dated September 1, 1909, from Chicago Great Western Railroad Company to Standard Trust Company of New York, Trustee, referred to in said petition, which said bonds are to bear interest at the rate of 4 per cent per annum, payable semiannually on the 1st day of March and September in each year, and are to be secured by a first mortgage upon the property of the company, as described in said first mortgage dated September 1, 1909.

And it further appearing to the satisfaction of the Commission that said Chicago Great Western Railroad Company has heretofore expended during the period from October 1, 1912, to

August 1, 1914, the sum of \$2,006,124.12 for the acquisition of property and for additions and betterments to its railroad and facilities;

And it further appearing to the satisfaction of the Commission that none of the items or amounts for which said company now desires to issue its said first-mortgage bonds are to reimburse the company for moneys directly or indirectly secured by or obtained from the issue of stock or stock certificates, or bonds, notes, or other evidences of indebtedness of said company, or for maintenance of service, replacements, or substitutions;

And it further appearing to the satisfaction of the Commission that the said expenditures, to reimburse itself for which the said company desires to issue its said bonds, were and are reasonably required for said purposes;

And it further appearing to the satisfaction of the Commission that none of the expenditures, to reimburse itself for which the said company now desires to issue its said bonds, is in whole or in part reasonably chargeable to operating expenses or to income, and that all of said expenditures are properly chargeable to capital account,

Now therefore it is hereby ordered as follows:

Section 1. That the said State Public Utilities Commission of Illinois does hereby authorize the issue by said Chicago Great Western Railroad Company of \$2,748,000, face value of principal, of bonds of said company, to be payable on the 1st day of September, 1959, and to bear interest at 4 per cent per annum, payable semiannually on the 1st day of March and September of each year, and secured by a first mortgage upon the property of the company bearing date the 1st day of September, 1909, from said Chicago Great Western Railroad Company to Standard Trust Company of New York, Trustee.

Section 2. It is further ordered that said issue of bonds is authorized upon the conditions following, and not otherwise, to wit:

First. That said Chicago Great Western Railroad Company shall sell the said bonds hereby authorized to be issued so as to net the said company not less than 73 per cent of the par value of the principal thereof, besides interest accrued thereon, and that the proceeds thereof shall be applied only to the following purposes, that is to say:

(1) For reimbursement of moneys actually expended from income or from other moneys in the treasury of said company not directly or indirectly secured by or obtained from the issue of stock, stock certificates, or bonds, notes, or other evidences of indebtedness of said company, for (a) acquisition of property, and (b) construction, completion, extension, and improvement of its railroad and facilities, \$2,006,124.12.

(2) For the discount for or deficiency, if any, in the amount realized from the sale to net not less than 73 per cent of par of the bonds sold for the purposes specified in paragraphs (a) and (b) of subdivision 1 of section 2, not exceeding the sum of \$741,875.88. Total \$2,748,000.00.

Second. That no part of the proceeds of said bonds shall be applied by said company to the payment of any dividends upon the capital stock of said company.

Third. That all discounts, commission, and expenses in connection with the approval, issuance, and sale of the said bonds authorized to be issued under this order, shall be amortized out of the income of the company before the 1st day of September, 1959, by the payment of equal annual instalments so long as may be necessary, such annual instalments to begin September 1, 1915.

Fourth. That said company shall keep separate, true, and accurate accounts showing the receipt and application, in detail, of the proceeds of the sale or disposal of the said bonds hereby authorized to be issued, and that within thirty days after the expiration of each calendar month, commencing with the month of January, 1915, so long as said bonds shall remain outstanding and unpaid, the company shall make verified report to the Commission, stating the sale or sales of said bonds during the previous period, the terms and conditions of sale, the moneys realized therefrom, the use and application of said moneys, and said accounts, vouchers, and records shall be open to audit, and may be audited from time to time by accountants and examiners designated for such purpose by the Commission.

Fifth. That said company shall, before the delivery of said bonds hereby authorized to be issued, cause to be printed or stamped on the face of each of the aforesaid bonds, for their proper and easy identification, the following:

“State Public Utilities Commission of Illinois
Authorization Number Eighty-eight,
January, 1915.”

Section 3. That said Chicago Great Western Railroad Company be and hereby is charged an amount equal to 10 cents for every \$100 of securities authorized by this order, and that the same shall be paid into the state treasury before any of such securities shall be issued.

Section 4. This order shall be signed by the acting secretary of this Commission and authenticated by its seal.

ILLINOIS PUBLIC UTILITIES COMMISSION.

IN RE APPLICATION OF PEORIA RAILWAY COMPANY.

[No. 3420.]

Security issues — Refunding of lawful obligations.

A railroad company was authorized to issue first and refunding 5 per cent mortgage bonds to the par value of \$570,000 for the discharge or lawful refunding of obligations incurred for the acquisition of property and the construction, extension, and improvement of and addition to its facilities.

Security issues — Bonds — Sale price.

An authorized issue of first and refunding 5 per cent mortgage bonds was ordered to be sold so as to net the company not less than 85 per cent of the par value of the principal and accrued interest thereon.

Security issues — Discount and commissions — Amortization.

All disbursements, commissions, and expenses in connection with the approval, issuance, and sale of an authorized issue of first and refunding 5 per cent mortgage bonds were ordered to be amortized out of the income of the issuing company by the payment of equal monthly installments.

[February 4, 1915.]

APPLICATION for permission to issue first and refunding 5 per cent mortgage bonds in the aggregate amount of \$570,000; granted.

By the **Commission**: The application aforesaid having come on for hearing before the Commission, and the petitioner having presented such testimony and evidence as it was advised and as the Commission required, and the application having been duly

submitted for disposition, and it appearing to the satisfaction of the Commission that the allegations of the petition are true, and that the said Peoria Railway Company desires to issue its first and refunding mortgage bonds to the aggregate principal amount of \$570,000, said bonds to be payable February 1, 1926, and to bear interest at 5 per cent per annum, payable semiannually, upon the first day of February and August in each year on presentation and surrender of coupons to said bonds annexed and secured by first and refunding mortgage upon the property of said company, a copy of which first and refunding mortgage is filed in this proceeding and marked Exhibit "C" to the said application herein filed, the proceeds of said bonds to be used as follows:

(1) For discharge and lawful refunding of obligations incurred for acquisition of property, \$570,000;

The said obligations so to be refunded being \$570,000 of bonds of Central Railway Company dated October 1, 1895, maturing April 1, 1915, and bearing interest at the rate of 5 per cent per annum, payable semiannually on the first day of April and October, and secured by a first mortgage or deed of trust of even date for the said bonds to New York Security & Trust Company, Trustee, of divers lands and properties in said mortgage and deed of trust described;

And it appearing to the Commission that said \$570,000, principal of said bonds payable on February 1, 1926, are to be issued subject to the terms and conditions set forth in said first and refunding mortgage dated June 20, 1906, from Peoria Railway Company to Chicago Title & Trust Company, trustee (Illinois Trust & Savings Bank, successor in trust), referred to in said petition, which said bonds are to bear interest at the rate of 5 per cent per annum, payable semiannually on the first day of February and August in each year, and are to be redeemable as provided by the terms of said mortgage dated June 20, 1906, from said Peoria Railway Company to Chicago Title & Trust Company, trustee (Illinois Trust & Savings Bank, successor in trust), as described in said first and refunding mortgage dated June 20, 1906;

And it further appearing to the satisfaction of the Commission that the said Peoria Railway Company is required to expend

the said sum of \$570,000 for the lawful discharge and refunding of said obligations heretofore issued for acquisition of property, as in said petition set forth, and that none of the items or amount for which said company now desires to issue its said first and refunding bonds is to reimburse the company for moneys directly or indirectly secured by or obtained from the issue of stock, or stock certificates, or bonds, notes, or other evidences of indebtedness of said company, or for the maintenance of service, replacement, or substitution, save and except only the refunding of said \$570,000 of bonds issued by said Central Railway Company;

And it further appearing to the satisfaction of the Commission that the property of the said Central Railway Company securing said \$570,000 of bonds of the said Central Railway Company so to be refunded has been acquired and is owned by the said Peoria Railway Company, petitioner herein, and that the said bonds of the said Central Railway Company so to be refunded are now a lien upon certain of the property of the said petitioner, Peoria Railway Company, and must be retired according to the terms thereof, and that said bonds mature April 1, 1915, as above stated;

And it further appearing to the satisfaction of the Commission that the said expenditures to reimburse itself for which the said company desires to issue its said bonds were and are reasonably required for said purposes, and that none of said expenditures to reimburse itself for which the said company now desires to issue its said bonds is not in whole or in part reasonably chargeable to operating expenses or to income, and that all of said expenditures are properly chargeable to capital account;

Now therefore it is hereby ordered as follows:

Sec. 1. That the State Public Utilities Commission of Illinois does hereby authorize the issue by said Peoria Railway Company of \$570,000, face value of principal of bonds of said company, maturing February 1, 1926, bearing interest at 5 per cent per annum, payable semiannually on the first days of February and August in each year, and being bonds numbered consecutively from 2751 to 3320, both numbers inclusive, described and referred to in mortgage from Peoria Railway Company to Chicago Title & Trust Company (Illinois Trust & Savings Bank, succes-

sors in trust), dated June 20, 1906, recorded July 13, 1906, as Document No. 13278 in the office of the recorder of deeds for Peoria county, Illinois.

Sec. 2. It is further ordered that said issue of bonds is authorized upon the conditions following, and not otherwise, to wit:

First. That the said Peoria Railway Company shall sell the said bonds hereby authorized so as to net the said company not less than 85 per cent of the par value of the principal thereof, besides interest accrued thereon, and that the proceeds thereof shall be applied only to the following purposes, that is to say: (1) For discharge or lawful refunding of obligations incurred for (a) acquisition of property, and (b) construction, extension, and improvements of and addition to its facilities, \$570,000.

The said obligations for the discharge or lawful refunding of which the proceeds of the bonds herein authorized to be issued are to be applied, being \$570,000 of bonds of Central Railway Company dated October 1, 1895, maturing April 1, 1915.

Second. That all disbursements, commissions, and expenses in connection with the approval, issuance, and sale of the said bonds authorized to be issued under this order shall be amortized out of the income of said Peoria Railway Company prior to February 1, 1926, by the payment of equal instalments for the remainder of the life of said bonds, such monthly instalments to begin March 31, 1915.

Third. That said company shall keep separate, true, and accurate accounts showing the receipt and application in detail of the proceeds of the sale or disposal of the said bonds hereby authorized to be issued, and that within 30 days after the expiration of each calendar month, commencing with the month of February, 1915, so long as said bonds shall remain outstanding and unpaid the company shall make certified report to the Commission, stating the sale or sales of said bonds during the previous period, the terms and conditions of sale, the moneys realized therefrom; vouchers and records shall be open to audit, and may be audited from time to time by accountants and examiners designated for such purpose by the Commission.

Fourth. That said company shall, before the delivery of said bonds hereby authorized to be issued, cause to be printed or

stamped on the face of each of the aforesaid bonds so to be issued, for their proper and easy identification, the following:

“State Public Utilities Commission of Illinois
Authorization Number Ninety-one
1915.”

Sec. 3. That said Peoria Railway Company shall secure a release of said Central Railway Company mortgage dated October 1, 1895, securing the \$570,000 of bonds to be refunded hereunder, and properly record the same, and furnish the Commission with a certificate to that effect; and that said Peoria Railway Company shall furnish this Commission with a certificate of cancelation and cremation for the said \$570,000 of bonds when refunded as provided herein.

Sec. 4. That said Peoria Railway Company be, and hereby is, charged an amount equal to 10 cents for every \$100 of securities authorized by this order to be issued, and that the same shall be paid into the state treasury before any of such securities shall be issued.

Sec. 5. This order shall be signed by the acting secretary of this Commission, and authenticated by its seal.

Note.—In Re Waverly Telephone Co. No. 3108, January 21, 1915, the Commission authorized an issue of capital stock to the par value of \$32,100, in exchange for an equal amount of common stock of a corporation of the same name which had failed to file its certificate of corporation as required by law, so as to render the organization void; and further authorized an issue of unsecured 6 per cent ten-year bonds or notes dated November 1, 1914, interest payable semi-annually, in the amount of \$4,700 for the purpose of taking up and satisfying an equal amount of preferred stock of such illegally organized company.

MAINE PUBLIC UTILITIES COMMISSION.

IN RE PETITION OF CARRABASSETT LIGHT & POWER COMPANY.

Monopoly and competition — Authority to supply service.

An electric light and power company was authorized to supply service in a village, where it appeared that, while other corporations had the right to furnish such service, they were not doing so, and were not in a position to do so, and did not oppose the application.

[February 17, 1915.]

APPLICATION for permission to furnish electric service; **granted.**

By the **Commission:** A petition asking the consent of this Commission, under § 27, chapter 129 of the Public Laws of Maine for the Year 1913, that the petitioner furnish its service in the village of North Anson, was duly presented and a hearing thereon ordered, which hearing was held at the offices of the Commission on this 17th day of February, 1915. Notice of the hearing as ordered was shown by proper evidence to have been given. The petitioner was represented by Judge Augustine Simmons, of North Anson, and J. H. Thorne of North Anson appeared to object to certain of the matters involved in the granting of the petition as originally framed.

At the hearing it was made to appear that North Anson is one of two villages in the town of Anson, the other village being Anson proper, which is about 5 miles away from North Anson. Anson proper is adjacent to the town of Madison. Within the town of Madison is a duly incorporated village association, which has authority to generate and sell electrical energy for lighting and power within the towns of Madison, Anson, and Starks. This corporation has for some years been generating electricity, and supplying same to its customers in the town of Madison and in the village of Anson proper. It has never extended its service to North Anson. It also appeared that the electric energy used by this village corporation is generated by water power, and that for two weeks in the year such power was not sufficient to supply the above named two villages with electricity during the entire day. It further appeared that if this village corporation should undertake to supply North Anson with electric energy, the water power would be insufficient to perform this additional service, unless, during a period estimated at two months during each year, an auxiliary gasoline plant was established to take care of the situation during periods of low water.

It further appeared that a corporation formed under the general laws of the state some years ago, and known as the Carrabassett Stock Farms, and another company also formed under such general laws, and known as the Carrabassett Company, each had authority to furnish electric energy in the village of North Anson,

but that neither of said corporations were furnishing such energy in such village at the date of the petition, and neither appeared at the hearing to oppose the granting of this petition.

It therefore appeared that three corporations had authority to generate and distribute electricity in the village of North Anson, but that no one of them was exercising such authority at the date of the petition, and no one of them appeared to have any present intention of exercising such authority.

It was shown at the hearing that Chester V. Bailey and some associates who were interested in the Carrabassett Stock Farms, believing that they had the right to generate and sell electricity in North Anson, had for several years been developing and distributing electric energy in this village. They were not so doing, however, under the charter of the Carrabassett Stock Farms. Learning that perhaps they had no right to operate in the town of Anson, Mr. Bailey and his associates formed under the general law the petitioning corporation, and such corporation continued to generate and distribute electricity in North Anson until about January 4th of this year. Financial difficulties occurring at that time made it impossible for the Carrabassett Company to further operate, and since that time the town of North Anson has been in darkness, and users of power have been entirely without energy. Under these circumstances the citizens of the town inquired of this Commission what could be done, and after correspondence with the Commission some of the citizens took the matter up with the Central Maine Power Company, and a tentative arrangement was made whereby the Central Maine Power Company would furnish to the petitioner sufficient electrical energy to supply the village of North Anson with adequate twenty-four hour service, and the petitioner so securing such energy could distribute it under its corporate rights and franchise.

It was, however, discovered that § 27, above referred to would prevent the Carrabassett Company from operating in North Anson without the consent of this Commission, inasmuch as the two above-named corporations were authorized to furnish similar service within the same territory. The petitioner was therefore advised by its attorney to present the matter in the form now before the Commission, and the above-named hearing and the development of the foregoing facts resulted.

At the hearing the Madison village corporation was represented by Judge Charles O. Small, and by one of the Assessors of the corporation, and the engineer in charge of the electric plant of the company. Judge Small stated to the Commission that the Madison village corporation had no present intention or desire or ability to furnish electric energy at North Anson. He further stated that the last-named corporation did not desire to forego or give up its rights granted by charter, and was advised by the Commission that if the pending petition was granted, no rights of the Madison village corporation would be taken away or abridged.

Inasmuch as there might be some confusion at some future time as to the exact limits of the village of Anson and the village of North Anson, it was agreed that the village of North Anson should be held to include no territory nearer than 2 miles from the Anson end of the Madison bridge.

It fully appeared and now appears to the Commission that the village of North Anson has heretofore been enjoying electric light and power. That since January 4th, 1915, such service has been entirely cut off. That neither the Madison village corporation nor the Carrabassett Stock Farms desires or is able to furnish this service. The arrangement set forth in the petition and in the testimony at the hearing seems to be the only method of relieving the present unfortunate situation. It is, therefore—

Ordered that under the provisions of § 27, chapter 129 of the Public Laws of the State of Maine for the Year 1913, the prayer of the petitioner be granted, and that the territory in which it is authorized to render its service shall be the village of North Anson as above defined, and that this Commission give its consent that the Carrabassett Light & Power Company furnish its service as prayed for within the village of North Anson as above defined.

It is further ordered that a copy of this decision be sent by mail to the Carrabassett Stock Farms and to the Madison village corporation forthwith.

Benjamin F. Cleaves, Mr. B. Skelton, Chas. W. Mullen, Public Utilities Commission of Maine.

MARYLAND PUBLIC SERVICE COMMISSION.

IN RE APPLICATION OF EDISON ELECTRIC ILLUMINATING COMPANY, OF CUMBERLAND, MARYLAND.

[Case No. 884; Order No. 2208.]

Security issues — Amount limited by value of property.

The Commission cannot authorize the issuance of securities beyond the value of a public service company's property, although it appears that the company has actually expended in the plant a larger sum than it asks to capitalize.

[February 18, 1915.]

APPLICATION for authority to issue capital stock; granted in part.

Henry, Commissioner: This is an application on the part of the petitioner for authority to issue \$200,000 of its capital stock, with a view of capitalizing the earnings of the company expended prior to December 31st, 1913, in the acquisition of property, as permitted under chapter 445, Acts 1914 (§ 34½ of the Public Service Commission Law), the said additional stock to be distributed *pro rata* among the stockholders existing as of December 17th, 1914, the date fixed by resolution of the stockholders of said company. The case was heard, in accordance with due notice by advertisement, on January 23d, 1915, at which hearing testimony was taken and arguments made by attorneys for the applicant.

The law governing an application of this character seems to be clear in the following essential points:

(1) That the books and vouchers of the applicant must satisfactorily show that earnings have been expended for the purposes set forth in the law, to an amount at least equal to the amount of stock which it is desired to capitalize.

(2) That earnings, represented by cash accumulations, and carried as current assets, cannot be capitalized under the law, but only such earnings as have been expended for property for the uses of the corporation.

(3) That the stock so authorized to be issued should be represented by property of at least equal value as of the date of its issuance.

An examination of the proceedings shows that since its organ-

ization approximately \$435,000 has been expended in the plant. The present capitalization is \$200,000, leaving a balance of \$235,000, not represented by any stock issue, expended out of earnings, or a margin of \$35,000, over and above the amount now asked to be capitalized.

On the other hand, the Commission finds that the value of the company's property as of December 31st, 1913, does not equal the outstanding capital of \$200,000, and the additional stock of \$200,000 now asked to be issued. An analysis of the separate appraisals of the property made by our own engineer and by engineers selected by the company, as well as consideration of the estimated valuation made by the auditor of the Commission, establishes the value of the property, as of December 31st, 1913, aforesaid, as not greater than \$375,000. This is the utmost amount, therefore, which the Commission can adopt as a basis for capitalization. As the present capitalization is \$200,000, including outstanding stock and bonds, this leaves \$175,000 as the amount of stock which we deem equitable to authorize as a stock dividend to the existing stockholders.

The prayer of the petition for the issuance of \$200,000 additional stock is therefore denied, and an order will be passed authorizing and approving an issuance of additional stock to the amount of \$175,000.

Note.—In accordance with the above opinion the following order was filed:

“Ordered, That the Edison Electric Illuminating Company, of Cumberland, Maryland, be, and it is hereby, authorized to issue common stock, in addition to its outstanding capital stock, to the amount of \$175,000, the said stock so to be issued, and hereby approved, to be distributed *pro rata* among the stockholders of the said company, of record as of December 17th, 1914.

“E. Clay Timanus, W. Laird Henry, Commissioners.”

Re Hagerstown Light & Heat Co. Case No. 386, Order No. 2172. January 23d, 1915, first mortgage 5 per cent 50-year gold bonds of the par value of \$75,000 of an authorized issue of \$325,000 were authorized to be sold at not less than 85 per cent of their par value, instead of at 90 per cent, as previously ordered, it appearing that it was impracticable to sell at the latter figure.

MASSACHUSETTS BOARD OF GAS AND ELECTRIC LIGHT
COMMISSIONERS.

IN RE LAWRENCE GAS COMPANY.

Rates — Gas — Discrimination — Reduced rates to employees.

The employees of a public service corporation should be on the same footing as the public as to prices for gas purchased.

Depreciation — Failure to provide for — Available funds paid out in dividends.

A gas company cannot maintain a price for gas which will indirectly cause its consumers to pay for the accrued depreciation and obsolescence of its plant, where it appears that under the prices which have prevailed the consumers have met all just obligations of this nature, but that the money properly applicable for such purposes has been paid out in dividends.

Depreciation — Available funds distributed in dividends — Detrimental to stockholders.

The policy of distributing in dividends money properly applicable to depreciation and obsolescence may result in serious injury to the stockholders, inasmuch as the safety and growing worth of their investment lies chiefly in the potential value of a relatively low capitalization, taken in conjunction with the increased earning power of a reasonable surplus.

Apportionment — Costs — Combined gas and electric business.

In a combined gas and electric business the costs should be so apportioned and the prices so adjusted that the consumers of one department will not have to assume any of the costs properly belonging to consumers of the other department.

Return — Reduction in rates — Effect of.

It is not certain that a reduction in the dividends of a gas company will necessarily follow a reduction in the price of its commodity.

Return — Eight per cent not necessary to attract capital.

Dividends of 8 per cent are not necessary to attract the capital reasonably necessary for the expansion of the business of a gas company which is well managed and favorably located, and which follows a conservative policy in issuing securities.

Return — Liberal returns — Allowed as a reward rather than as a right.

Liberal dividends should be allowed as a reward for progressive and efficient management, but they will not be regarded as a right, creating of itself the excuse for the maintenance of a price.

Return — Construction costs fully capitalized — Dividend returns — Premiums on sales of stock — Rate reduction recommended.

A reduction from 90 cents to 85 cents in the maximum net price of gas to be charged by a company was recommended, where, among other things, it appeared that the company had consistently pursued a policy of representing in capital stock every item of expenditure

attendant upon the extensions of its plant, and had paid 6 per cent dividends on its stock for a considerable period prior to 1907, 7 per cent dividends in 1907, and 8 per cent dividends each year thereafter, and had been able to issue stock at premiums from which it had realized in all the sum of \$654,987 in addition to the par value thereof.

[February 18, 1915.]

COMPLAINT to reduce rates; granted.

By the Commission: This is a complaint in writing, under § 162 of chapter 742 of the Acts of the Year 1914, by more than twenty customers of the Lawrence Gas Company, of the price of gas sold and delivered by it.

After due notice, as required by law, a public hearing on said complaint was held in Lawrence, at which both the complainants and the company were represented by counsel.

This company was organized under a special act, in 1849, for the purpose of manufacturing and selling gas in Lawrence. In 1877 it was duly authorized to extend its gas mains into Andover, North Andover, and Methuen, and in 1887 and subsequently to engage in the business of generating and furnishing electricity in the same territory in which it was authorized to supply gas. It is still supplying both gas and electricity in Lawrence, Methuen, North Andover, and Andover, and electricity only in Boxford.

It is charging for gas a gross price of \$1 a thousand cubic feet, with a discount of 10 cents for prompt payment, or a net price of 90 cents. To mills using 6,000,000 cubic feet of gas a year, and to the city of Lawrence, the price is 80 cents net. To the company's office employees the price is 50 cents net. The present prices, with the exception of the 80-cent price to mills, have been in force since July 1, 1907, and the 80-cent price to the mills since April 1, 1909. Since the present prices have been in force the output has increased from 325,679,588 cubic feet during the year ending June 30, 1907, to 475,800,592 cubic feet during the year ending June 30, 1914, an increase of over 45 per cent. While there has been some additional gas sold the city under the 80-cent rate, the increase in output already noted has been almost wholly in the gas sold at the 90-cent rate.

Some criticism was directed, at the hearing, to the differential prices offered the city, large mills, and office employees. The amounts involved are too small to make this question material

in the determination of the maximum net price. But no convincing reasons were offered in their defense. The price to office employees is of doubtful legality; and, if justified on any ground, and particularly as a feature of their agreed compensation, there seems to be no good reason why all of the company's employees should not enjoy the benefit of a similar arrangement. This practice, however, is so obviously susceptible of abuse that, as a rule, it is expedient that the employees of public service corporations should be on the same footing as the public as to prices for gas or electricity purchased.

The company makes and sells both coal and water gas. The generating capacities of its respective gas and electric plants, and its distributing systems, have not only kept pace with the growth of population in its territory, but have at present a substantial margin to meet the demands of increased output due to more continuous loads, lower prices, and future growth of population. The technical conduct and local administration of the company have been able and successful, and no complaints were made as to any failure in the quality of the gas, or of arbitrary treatment of the public. In the cost of producing gas it is at some disadvantage because of an unusually high freight rate on coal, and until recently and for more than two years past, in common with other companies making water gas, it has been affected by the high price of oil. There was also evidence at the time of and since the hearing of an increase in wages, and the business depression in Lawrence during and following the great strike halted for a time the steady growth of the company's business. But conditions are now normal, and the company with its present plant and management should be able to make and sell gas at a relatively low cost.

Since the company first began making returns to the Board, and up to 1907, it paid regularly a 6 per cent dividend. In that year 7 per cent was paid, and since that year 8 per cent has been paid. The company at present has outstanding bonds of \$300,000, capital stock of \$1,900,000; and it has been recently authorized to issue additional capital stock of the par value of \$600,000. A majority of its capital stock has been issued at premiums from which the company has realized or will realize in all the sum of \$654,987 in addition to the par value of the stock. This investment is about equally divided between the gas and electric plants.

The main ground upon which the petitioners relied in their demand for a reduction in price was that the company had not shared with the public in its increasing returns, but had imposed upon the consumers an unnecessarily high capital burden.

For a considerable period of years the present management has been in control, and the company has consistently pursued a policy of including in its plant accounts every item of expenditure attendant upon the extensions of its distribution system and enlargement of its generating plants, whether incurred for labor and materials purchased, or for the engineering and supervision of its regular officers, and of representing the full amount of such expenditures in capital stock. While liberal provision for repairs and renewals has been made as a part of the operating expenses, the actual charges to depreciation have been slight, and the distributions of the net earnings in dividends have been so large as to leave but little available to make good the original cost of machinery and appliances which, owing to changes in conditions or the progress of the art, have had to be practically abandoned or supplanted, even though still in place.

Under the prices which have prevailed in the period mentioned, for both gas and electricity, it seems fair to assume that the consumers have met all their just and natural obligations toward depreciation of the plant. If the payments for that purpose have not been put back into the plant, but divided as dividends, the consumers should not be called upon indirectly to discharge that obligation again by the maintenance of a price in order to provide a certain return on new money, a substantial part of which a more prudent policy might have made unnecessary. Such a course persistently pursued may also result in a serious injury to the stockholders; for the safety and growing worth of their investment lies chiefly in the potential value of a relatively low capitalization, taken in conjunction with the increased earning power of a reasonable surplus.

In a combined gas and electric business it is not easy to keep the respective plants and operations accurately separated. The investment, to some extent at least, represents joint needs, and many of the general expenses are common to both departments, and must be arbitrarily apportioned, if at all. It is important that the consumers of gas shall not be required to assume, in the

price charged, any of the costs properly belonging to consumers of electricity. The latter have an equal and opposing right. There is evidence in the company's accounts that the electric business has been relatively more profitable than its gas business, and the Board has been influenced in the conclusion which it has reached by a purpose to give due weight to this consideration.

It was urged in behalf of the company that a reduction in price will result in a cut in the dividend rate, and a consequent inability to command readily new capital to meet requirements for plant extensions, and a decrease in efficiency. While the Board is not convinced that a reduction in dividends will necessarily follow a reduction in price, yet even if such result might confidently be expected, this is by no means a conclusive argument against a reduction in price. Experience has shown that a well-managed and favorably located gas company such as this, which follows a conservative policy in the issue of securities, does not need to raise its dividends to 8 per cent in order to command readily and promptly all of the capital reasonably necessary for expanding its business. While the Board has not been disposed to criticise or interfere with liberal dividends properly and fairly earned by progressive and efficient managements, it has regarded such dividends as a reward, rather than as a right, and certainly not as creating of itself the excuse for the maintenance of a price.

In view of the foregoing considerations, and after a careful examination of the company's conditions and affairs, the Board is of the opinion that the price recommended will be sufficient to cover all reasonable operating expenses incurred in the gas business, including a proper allowance for depreciation, and a fair return upon the property which it is actively and necessarily employing for the public convenience.

The Board therefore recommends that on and after the first day of March, 1915, the maximum net price for gas charged by the Lawrence Gas Company shall not exceed 85 cents per 1,000 cubic feet.

NEW HAMPSHIRE PUBLIC SERVICE COMMISSION.

CHARLES H. MOREY ET AL.

v.

MAINE CENTRAL RAILROAD.

Service — Railroads — Winter trains — Discontinuance upheld.

The Commission refused to order the restoration of certain winter train service, where it appeared that there was a large deficit from general operation of a railroad company in the state, and that the trains in question fell far short of paying operating expenses during the winter season.

[February 17, 1915.]

PETITION for restoration of certain winter passenger trains; denied.

Appearances: Bernard Jacobs for the petitioners; Charles H. Blatchford and George S. Hobbs, Vice President, for the Maine Central Railroad.

REPORT.

By the **Commission**: This is a petition by Charles H. Morey and others, asking for the restoration of trains Nos. 155 and 158, operating between Bartlett and Lancaster, the first leaving Lancaster at 7:28 A. M., and arriving at Bartlett at 9:08 A. M., and the second leaving Bartlett at 3:41 P. M., and arriving at Lancaster at 5:35 P. M. The trains were discontinued on December 28, 1914. Hearings were held at Concord on January 8 and January 29, 1915.

It appears from the evidence that the trains in question were discontinued, as a part of a general curtailment of service on the Maine Central system, made to meet a large loss of revenue resulting from recent abnormal business conditions. There was also evidence that all of the New Hampshire operations of the Maine Central Railroad are conducted at a substantial net loss. Upon this point, evidence was offered that such New Hampshire operations for the year ending June 30, 1914, resulted in a net loss of \$92,169.83, including taxes, but not including rentals and betterments chargeable to income, the expenditures for which, upon the New Hampshire portion of the roads operated, were shown to be for rentals \$145,847.09, and for betterments \$12,

\$24.91, making a total deficit, on account of New Hampshire operations, of \$250,841.83. Since June 30, 1914, there has been a very large decrease in operating revenues, as a result of which the curtailment mentioned has been made.

It was testified that the trains in question in the winter season fall far short of paying operating expenses, by reason of the slight travel and the necessity of operating additional plow trains through Crawford Notch to keep the track clear from drifting snow. It was suggested on the part of the respondents that the service asked for may be voluntarily restored on April 1st.

The present passenger service on the Maine Central Railroad between Bartlett and Lancaster is undeniably scant, and we think a rearrangement of schedules should be made in the spring which will more fully meet the demands of local travel, and also furnish transportation facilities for the school children, who have heretofore relied upon trains Nos. 155 and 158. At the present time, however, we do not feel that we should be justified in ordering the trains to be operated during the current winter season. The pending petitions will not be dismissed, and further consideration will be given to the case if the service asked for is not voluntarily restored on April 1st, as suggested.

All concurred.

NEW JERSEY BOARD OF PUBLIC UTILITY COMMISSIONERS.

IN RE APPLICATION OF PHILLIPSBURG HORSE CAR RAILROAD COMPANY.

Security issues — Amount limited by value of property.

The Commission refused to allow an increase of the capital stock of a horse car company to provide for the entire cost of electrification and reconstruction, where it appeared that a portion of the expenditure had been for replacements, but so limited the increase as to make the entire capitalization correspond substantially to the appraised value of the reconstructed property, including a 10 per cent allowance of structural cost for omissions, contingencies, and contractor's profit.

[February 16, 1915.]

APPLICATION for permission to increase capital stock; granted in part.

Donges, President: It appears that the Phillipsburg Horse Car Railroad Company was incorporated under special acts of the legislature passed in 1867 and 1868; that a horse car line was constructed along Main street in Phillipsburg, in connection with which stock in the par value of \$30,000 was issued.

Phillipsburg is directly across the river from Easton, Pennsylvania, and, from an industrial standpoint, forms part of the same general community.

The capital stock of the Phillipsburg Horse Car Railroad Company is owned by the Easton Transit Company, and the properties in the two states have been operated for many years under the same general management.

From time to time extensions have been made to the lines of the Phillipsburg company, and in 1894 the system was electrified. At the time of construction, the gauge of the track was 5 feet 2 inches, and, in accordance with recommendations of the Board, the gauge was changed to standard, and the property has been completely rebuilt within the past year.

Since the original issue of capital stock in the amount of \$30,000, no stock has been issued, nor have any bonds been issued by the Phillipsburg company. The funds needed for the electrification, for the various extensions, and for the complete rehabilitation which took place in the past year, have been furnished from time to time by the Easton Transit Company. These advances have been carried on the books of the Easton Transit Company as debts of the Phillipsburg Horse Car Railroad Company. In addition, it is contended that interest on these debts should be paid by the Phillipsburg company.

The company's application is for the issue of stock amounting to \$400,000. This, added to the original issue, would make a total capitalization of \$430,000.

The application submitted by the company contains the necessary financial data to show that the various debts of the Phillipsburg company amount in total to the \$430,000, including the stock already outstanding. It is contended by the company that unpaid interest would increase the amount given above in very considerable measure, but no claim is made for this back interest, other than is already carried on the books of the Easton Transit Company.

The cost of the electrification, including interest on loans up to the present time, amounted to	\$164,158.80
The estimated cost of reconstruction, which has just been completed, less allowance for salvage was	151,000.00
For extensions, improvements, betterments, and reconstruction, not included in the foregoing items, earnings have been expended to the extent of	84,841.20
The total of these items is	<u>\$400,000.00</u>

It is upon this basis that the company's application is made up.

In view of the fact that moneys expended had been, to some extent at least, for replacement purposes, a complete appraisal was made of the property as it exists since the last reconstruction. The total amount found in this appraisal is as follows:

101. Engineering and superintendence	\$ 5,262 21
102. Right of way	18,048 27
103. Other lands used in elec. rly. operations	2,000 00
104. Grading	11,800 00
105. Ballast	1,508 00
106. Ties	17,132 38
107. Rails, rail fastenings and joints	45,433 95
108. Special work	11,382 00
110. Paving	50,486 00
111. Track laying and surfacing	19,784 00
112. Roadway tools	399 40
117. Interlocking and other signal apparatus	1,074 00
118. Telegraph and telephone lines	1,018 14
119. Poles and fixtures	3,874 45
122. Distribution system	9,220 89
127. Shops and carhouses	15,181 85
135. Cars	42,648 00
137. Electrical equipment of cars	23,500 00
138. Other rail equipment	3,864 92
139. Miscellaneous equipment	400 00
141-143 Interest and taxes during construction	10,630 27
145. Organization	4,000 00
146. Franchises (Legal and other expenses only)	10,000 00
Total	<u>\$307,648 73</u>
Add 10 per cent of structural cost for omissions, contingencies, and contractor's profit	18,729 50
Grand Total	<u>\$326,378 23</u>

In the opinion of the Board, having in mind the conditions laid down in the act of 1906 regulating the issue of securities by public utility companies, a fair capitalization for this company is \$326,300. It will be noted that this falls short of the company's application by the amount of \$103,700.

In the opinion of the Board, approval could be given to the capitalization including stock to the amount of \$326,300, and to the issue of some sort of serial or temporary notes to the amount of \$103,700, which are to be automatically taken up from

earnings. The issuance of the stock and of the temporary notes referred to will enable the Phillipsburg Horse Car Railroad Company to pay its debts to the Easton Transit Company, and will at the same time provide a capitalization which bears the proper relation to the property owned by the company.

In the application submitted by the company, willingness is expressed to abide by the Board's decision with regard to the amount of stock to be issued, in the following words:

Section 7. "Your petitioner is desirous of increasing the amount of its capital stock from \$30,000 to \$430,000, or such part thereof as may be approved by your Honorable Board."

The Board therefore approves the issue by the company of stock in the par value of \$296,300, and a certificate for this amount will issue.

The Board will, upon the proper application for the same, give consideration to the issue by the company of some sort of serial or temporary notes for the payment of the balance of the indebtedness, amounting to \$103,700.

Board of Public Utility Commissioners, Ralph W. F. Donges, President.

Note.—It is to be observed that the Commission states in the above case that serial or temporary notes to provide for the difference between the actual cost of electrification and reconstruction of a horse car railway, and the actual value thereof, due to replacements not properly capitalizable, will be authorized, upon proper application, to be issued and taken up automatically from earnings.

OKLAHOMA CORPORATION COMMISSION.

IN RE PROPOSED ORDER NO. 137.

[Cause No. 1899; Order No. 905.]

Rates — Telephone — Charge for transferring numbers.

The numbers of telephone subscribers moving from one house to another should be transferred without charge, when it is not necessary to move the telephones.

Rates — Telephone — Charge for new installation.

Telephone utilities should make no charge for new installation.

Rates — Telephone — Moving telephone.

A charge of not more than \$1 may be made for moving a telephone from one house to another, and of not more than 50 cents for moving a telephone from one room to another in the same building.

[February 17, 1915.]

PROCEEDINGS to prescribe standard charges for moving or changing telephones.

Appearances: S. H. Harris and J. R. Spielman for Pioneer Telephone & Telegraph Company; W. J. Dibbins for Guthrie Gaslight, Heat, & Improvement Company.

OPINION AND ORDER.

By the **Commission**: Proposed order No. 137 was published as required by law, notifying all telephone, gas, and electric companies that the Commission would hear evidence for the purpose of prescribing a standard rule for making charges for the moving or changing any telephone, electric, gas, or water meter, and prescribing charges therefor.

At the hearing it was suggested by the Commission that a different rule may be properly applied to gas, electric, and water meters, and at this time rules and charges for the changing of telephones will be considered. This is made necessary because of many dissimilarities in the transfer and removal of telephones as compared with meters. Some telephone companies of the state make no charge for the moving of telephones for their customers. Others have a fixed charge, regardless of whether the telephone in reality is moved. In most instances when property is vacated in a city or town, other parties move in, and the telephone is not changed except as to the transfer of the number of the telephone on the switchboard, which is done by means of jumper wires on the distributing rack at central office. The expense of changing a telephone in this manner is nominal. We see no reason why a specific charge should be made for changes coming under this class.

From the statement in the record, no telephone company now makes a charge for the original installation of a telephone. Where it becomes necessary to move a telephone from one place to another, this expense must be paid out of revenue collected.

It is claimed in the evidence that some patrons move as often

as four times per year. In such cases, we see no reason why a reasonable charge should not be imposed for this removal.

It is hereby ordered that all persons, firms, or corporations operating a telephone utility within the state of Oklahoma shall transfer the numbers of its subscribers when moving from one house to another, when it is not necessary to move telephones, without charge. That no charge shall be made for new installation. A charge for removing a telephone from one house to another house may be imposed which shall not exceed \$1; for removing a telephone from one room to another room in the same building, a charge not to exceed 50 cents may be made.

This order shall be in full force and effect on and after the 1st day of April, 1915.

Corporation Commission, J. E. Love, Chairman; A. P. Watson, Commissioner; Geo. A. Henshaw, Commissioner.

OKLAHOMA CORPORATION COMMISSION.

C. L. WOLVERTON ET AL., RED ROCK,

v.

ATCHISON, TOPEKA, & SANTE FE RAILWAY COMPANY.

[Order No. 906; Cause No. 1629.]

Service — Railroad — Passenger facilities — Location of depot.

The contention of a railroad company that grade and other conditions make it impracticable to move its depot cannot outweigh the considerations of the traveling public going almost $\frac{1}{4}$ of a mile to a depot for all time to come.

[February 17, 1915.]

PROCEEDINGS relating to relocation of passenger depot.

Appearances: C. L. Wolverton for complainant; J. R. Cottingham for defendant.

By the **Commission**: On the 14th day of January, 1913, after full hearing, the Commission issued order No. 664, which in substance required the defendant company to move its depot from its present location at Red Rock to a point near Main street; that at the time of the hearing, the land adjoining the

right of way which was necessary to be acquired for the purpose of furnishing additional room for depot facilities was an inalienable Indian allotment and could only be acquired with the approval of the Secretary of the Interior. The order was made conditional upon the citizens of Red Rock acquiring title to a sufficient amount of this land which was prescribed in the order, and deeding the same to the railway company. This was done at an expense to the citizens of \$600. After the deed had been delivered to the defendant, it then asked the Commission to make a reinvestigation of the proposition.

Upon this second investigation, the commissioners and the engineer for the Commission made a personal inspection of the grounds, and from all the evidence and circumstances in the case, find that the reasonable necessities and conveniences of the people at Red Rock could be better subserved by the depot being moved to a point on defendant company's right of way, on West side of main track between Main and Fourth streets, in the city of Red Rock, Oklahoma, as shown on Commission's plat; that the contentions of carrier, that grade and other conditions make it impracticable to move the depot, could not outweigh the considerations of the traveling public going almost $\frac{1}{4}$ of a mile to a depot for all time to come.

The Commission sees no necessity for changing its former order, and the motion for rehearing is hereby denied.

Corporation Commission, J. E. Love, Chairman; Geo. A. Henshaw, Commissioner.

WISCONSIN RAILROAD COMMISSION.

KURT HORNING

v.

BIG FALLS RAILWAY COMPANY.

Rates — Railroads — Comparison with other lines — Loss.

The Commission refused to reduce the rates of a railroad on forest products, where it appeared that such rates were not excessive as

compared with rates on other lines operating under practically the same conditions, and where its business was carried on at a loss.

Service — Adequacy — Small carrier.

A small logging railroad, while holding itself out as a common carrier, is required to furnish reasonably adequate service at all times.

[February 17, 1915.]

COMPLAINT that rates on a small logging railroad were unreasonable; dismissed.

Appearances: Geo. Wilhelm of Iola, Wisconsin, for the petitioner.

By the **Commission**: This is a complaint against the service and against the rates on logs and lumber between points on the Big Falls Railway. This line, which was equipped and primarily intended for a logging railroad only, extends from Big Falls in a northwesterly direction to a point called Comet, a distance said to be less than 10 miles. Its equipment consists of a small "dinky" engine and a number of 22 foot, 20,000 lbs. capacity, Russell logging flats, and its principal business is the transportation of saw logs from points along its line to Big Falls for the Wall & Spalding Lumber Company, who are the owners of the railroad company. Its freight traffic moves in one direction only, that is, to Big Falls. The petitioner and other individuals who own timber lands adjacent to this line of railroad want the railroad to furnish them dependable service in connection with rates that are lower than those at present in force on forest products to be transported to Big Falls when destined beyond to points on the Chicago & Northwestern Railway.

The Big Falls Railway is a common carrier, and it publishes and files with the Commission schedules showing its charges for the transportation of passengers and freight. The petition alleges that this railroad company refuses to transport shipments of saw logs for the petitioner or any other party except Wall & Spalding, and that the rates it charges on shipments of lumber are excessive in all instances, and should be not more than one half of said rates. The schedule of freight rates at present in force, which are the only schedules specifically involved herein,

filed with the Commission by the Big Falls Railway Company, apply as follows:

G. F. D. No. 2010, effective April 1, 1912, names rates on various commodities in carloads, subject to a minimum shipment of two cars to be moved in the same direction, either from one or more shippers, and on all less carload lots except perishable goods and explosives, between Siding No. 5 and Big Falls and intermediate sidings. Rule No. 3 of this tariff reads: "Agents and conductors will refuse to order from connecting lines cars to be loaded on tracks covered by this tariff when for any reason the tracks already assigned for the loading of such cars are filled, or when we are satisfied that the cars will not be loaded promptly after moved by us, or when it is impossible for us to move the cars promptly." These rates are: \$5 per car of 50,000 lbs. capacity and under, \$6 per car of 60,000 lbs. capacity, \$7 per car of 70,000 lbs. capacity, \$8 per car of 80,000 lbs. capacity, and \$10 per car of over 80,000 lbs. capacity on agricultural implements, brick, cement, chair stock, camp supplies, cedar posts and poles, flour, feed, grain, hard and soft coal, hay, household goods, lumber, lath, land plaster, lime, plaster, piling, sawmill machinery, sugar beets, shingles, tilting (owner's risk), sewer pipe (owner's risk), and wagons, and \$5 per car of 80,000 lbs. capacity and \$7 per car of over 80,000 lbs. capacity on basswood bolts, Christmas trees, hub timber, potatoes, peavy stock, pulpwood, sawdust, shavings, tan bark, and wood for fuel. Less carloads 10c per 100 lbs., except lumber \$1 per 1,000 feet., shingles 10c per 1,000, crockery and glassware 16c per 100 lbs., minimum charge on less carload shipments 25c.

G. F. D. No. 2012, effective January 1, 1915, names rate of \$2.50 per car on saw logs in 22 ft. 20,000 lbs. capacity bunk and chain Russell logging flat cars from siding No. 5 and intermediate points to Big Falls. Prior to January 1, 1915, this rate was \$2 per car.

It is apparent from the foregoing that the only rate published on saw logs is of no use in connection with shipments beyond Big Falls, for the reason that such shipments would necessarily

have to be transferred at Big Falls to standard cars at the expense of shippers. However, on the face of the matter, the rate of \$2.50 to Big Falls on logs in 20,000 lbs. capacity cars appears to be slightly higher than rates applying on other commodities in standard cars.

From testimony taken at the hearing in this case, which was held September 18, 1914, and from correspondence growing out of an informal complaint against the service of the Big Falls Railway Company, filed with the Commission by Geo. Wilhelm of Iola, Wisconsin, who appeared at the hearing as a witness for the petitioner, it appears that the railroad company alleges that during the months of January, February, March, and April it is worked to full capacity in order to handle logs. These logs are loaded on small Russell logging flats which cannot be handled in the same train with standard equipment, so that in order to handle the latter it is necessary to delay the logging service. Inasmuch as a special trip is required to place standard cars for loading and another special trip to get them when loaded, the handling of such equipment during the period named would result in serious and expensive interruptions to the logging service. It is intimated that during the balance of the year shippers along the line are well taken care of.

The evidence at hand does not show very clearly just what rates and service would be satisfactory to the petitioner. Neither does it show what amount of traffic could be expected to move over this line if the conditions were satisfactory. It seems that the petitioner and others now haul most of their shipments to Tigerton or Big Falls, and ship via the Chicago & Northwestern Railway from these points. The advantage or disadvantage, in so far as rates are concerned, in shipping over the Chicago & Northwestern Railway from Tigerton and Big Falls, rather than over respondent line to Big Falls and from there over the Chicago & Northwestern Railway, and the rates that would apply from points on the Big Falls line if this line were a part of the Chicago & Northwestern Railway system, and entitled to local rates now in force on that line, is perhaps quite fully illustrated in the following table:

From	To	Rates in cents per 100 lbs.					
		Miles	Logs ²	Bolts ²	Lumber	Fuel Wood ⁴	Pulp Wood
Tigerton	Clintonville	18.6	1.0	1.65	4.3	2.0	2.4
Big Falls	"	17.7	1.0	1.65	4.3	2.0	2.4
Points on B. F. Ry. (*)	"	.....	¹² 0	¹² 65	¹⁵ 3	¹³ 0	3.4
Tigerton	Appleton	27.7	1.1	1.85	5.0	2.25	2.6
Big Falls	"	54.7	1.5	2.35	7.0	2.75	3.1
Points on B. F. Ry. (*)	"	53.8	1.5	2.35	7.0	2.75	3.1
Tigerton	Oshkosh	.....	¹² 5	¹³ 35	¹⁸ 0	¹³ 75	4.1
Big Falls	"	63.8	1.6	2.55	¹⁷ 0	3.0	3.3
Points on B. F. Ry. (*)	"	63.7	1.6	2.55	7.0	3.0	3.3
Tigerton	Eland Jet.	62.8	1.6	2.55	7.0	3.0	3.3
Big Falls .....	"	.....	¹² 6	¹³ 55	¹⁸ 0	¹⁴ 0	4.3
Points on B. F. Ry. (*)	"	72.8	1.8	2.69	¹⁷ 0	3.0	3.44
Tigerton	Antigo	12.4	1.0	1.55	4.3	2.0	2.3
Big Falls	"	24.9	1.1	1.75	5.0	2.25	2.5
Points on B. F. Ry. (*)	"	.....	¹² 1	¹² 75	¹⁶ 0	¹³ 25	3.5
Tigerton	Wausau	34.9	1.2	1.95	5.5	2.5	2.7
Big Falls	"	32.6	1.2	1.95	5.5	2.5	2.7
Points on B. F. Ry. (*)	"	45.1	1.4	2.15	6.0	2.75	2.9
Tigerton .....	"	.....	¹² 4	¹³ 15	¹⁷ 0	¹³ 75	3.9
Big Falls	"	55.1	1.5	2.35	6.4	2.75	3.1
Points on B. F. Ry. (*)	"	34.8	1.2	1.95	5.5	2.5	2.7
Tigerton	"	47.3	1.5	2.25	6.0	2.75	3.0
Big Falls .....	"	.....	¹² 5	¹³ 25	¹⁷ 0	¹³ 75	4.0
Points on B. F. Ry. (*)	"	57.3	1.6	2.45	6.4	2.75	3.2

Explanation of reference marks used in the foregoing table:

* C. & N. W. Ry. local distance rate for distance from Big Falls plus 10 miles.

¹ 1c per 100 lbs., which is about what rates on the Big Falls Ry. average, added to rate from Big Falls.

² For manufacture and reshipment, minimum weight 50,000 lbs.

³ Big Falls (Marion) group rate.

⁴ High minimum schedule of rates. These are the rates in general use.

Remarks: Rates for long distances except distance rates, northbound, are the same from Big Falls and Tigerton.

The rate schedules of the Big Falls Railway Company applicable in connection with carload shipments in or on standard cars apply only when two or more cars are handled at the same time, so that any single service results in minimum earnings of \$10 or \$12. To earn this amount the railroad company must make two round trips between Big Falls and loading point, one in handling empty cars and the other in handling loads. This service would require a total train mileage of perhaps 40 miles and take about 4 hours' time, which, aside from any expense other than wages of trainmen, would cost the railroad company around \$4 or \$5, or something like one half of the total amount of charges for the service. In case the service was given promptly all the year round, regardless of interruption to the logging operations referred to above, the average cost would undoubtedly be greatly increased. These conditions indicate quite plainly that unless there is an average movement in standard equipment of more than two cars at the same time, this service cannot be given at rates that are materially lower than those complained of without actual loss to the railroad company. The following

table prepared from schedules on file with the Commission shows rates on logs and lumber on practically all the small Wisconsin lines. These rates are not exact in all instances, but are figured on a weight of 50,000 lbs. for the reason that schedules of these small lines are not all on a distance basis or based on a uniform minimum weight.

Charges on 50,000 pounds loaded in or on standard car.

Railroads	5 miles		10 miles		15 miles	
	Saw Logs	Lumber	Saw Logs	Lumber	Saw Logs	Lumber
Bayfield Transfer	\$4.40	\$4.00	\$4.80	\$8.00	\$5.20	\$8.00
Big Falls	5.00	5.00	5.00	5.00	5.00	5.00
Chicago & Lake Superior ..	6.25	6.25	....	....	....	....
Chippewa Valley & Northern	3.50	9.00	4.00	9.00	7.00	9.00
Drummond & Southwestern	12.00	12.00	12.00	12.00	12.00	12.00
Dunbar & Wausaukee	8.25	15.00	8.25	20.00	8.25	20.00
Hillsboro & Northeastern..	15.00	15.00	....	....	....	....
Laona & Northern	5.00	5.00	5.00	5.00	5.00	5.00
Mattoon	11.00	No rate	12.00	No rate	12.75	No rate
Marathon County	5.00	5.00	5.00	5.00	6.00	6.00
Marinette Tomahawk & Western	7.50	15.00	8.20	17.50	8.90	20.00
Superior & Southeastern ..	6.25	12.50	6.25	12.50	7.50	12.50
Whitcomb & Morris	4.00	4.00	5.00	4.00	....	....
Wisconsin & Northwestern.	15.00	15.00	20.00	20.00	20.00	20.00

The above table shows that the rates on the Big Falls Railway, complained of herein, are in most instances lower than rates on other small lines. For further comparisons of the same nature and for a full discussion of the different points herein involved, see *Streveler v. Marathon County R. Co.* 1 Wis. R. C. R. 831 and 2 Wis. R. C. R. 64; also Re application of Marathon County R. Co. for authority to increase its rates, 7 Wis. R. C. R. 392.

It is evident from the foregoing that the rates herein complained of are not excessive as compared with rates on other lines where practically the same conditions exist. It may be that the service in connection with these rates is inadequate, but the evidence at hand does not indicate what service is needed. The important thing to the petitioner appears to be a reduction in rates rather than improved service, so that it is likely that improvement in the service alone, without reduced rates, would be of no great advantage to him. However, from the cases cited above it will be seen that the respondent is required to furnish

reasonably adequate service at all times, and cannot lawfully refuse to do so while engaged in the business of and holding itself forth as a common carrier.

A careful analysis of the income accounts and of the property assets of the respondent also indicate that its business is carried on at a loss rather than a profit; that is, the traffic on its lines at the existing rate is not sufficient to cover operating expenses, including depreciation and a reasonable amount for interest and profit on the investment.

In view of the fact and conditions which have thus been explained, the Commission finds it necessary to dismiss this case and to enter the following order:

Now, therefore, it is ordered that the complaint in this case be, and the same is hereby, dismissed.

Railroad Commission of Wisconsin, Halford Erickson, Walter Alexander, Commissioners.

WISCONSIN RAILROAD COMMISSION.

FRANCIS S. BRADFORD

v.

WISCONSIN TRACTION, LIGHT, HEAT, & POWER
COMPANY.

Service — Interurban cars — Stopping on steep grade.

That it would be difficult to restart interurban cars after stopping at a designated point, on account of the steepness of the grade, and that it would be dangerous to do so in the winter months, will not justify refusal to stop there in the summer months, where this can be done without jeopardizing the public or interfering with the maintenance of schedules, and where the public convenience requires it.

[February 18, 1915.]

PETITION to require the stopping of interurban cars at a designated point for the convenience of passengers; granted from May 1st to November 1st each year.

By the **Commission**: The petition alleges in substance that the Wisconsin Traction, Light, Heat, & Power Company refuses to stop its northbound interurban cars where Prospect street

enters Pearl street in the city of Appleton, and that such refusal is unreasonable and renders the service inadequate. The Commission is therefore asked to require the respondent to stop its cars on signal at the designated point.

The respondent in its answer alleges in substance that the stop prayed for is unnecessary, and that to establish it would create a dangerous situation. The dismissal of the petition is therefore asked.

A hearing was held at Appleton on September 8, 1914. F. S. Bradford appeared in his own behalf, and L. A. Ollwell for the respondent.

The testimony shows the interurban line curves from Water street northwesterly on Pearl street to Prospect street, at which point it turns to the north. Between Water street and Prospect street the track lies near the easterly side of Pearl street, and north of Prospect street it lies on the westerly side of the street. The average ascent on Pearl street from Water street to Lawrence street is about 7 feet in 100 feet. Southbound cars descending the grade stop at the intersection of Pearl and Prospect streets, but northbound cars do not make this stop. Persons desiring to use northbound cars are obliged to go to the foot of the grade near a side track of the Chicago & Northwestern Railway Company's line at a point between two factory buildings, or to go to the top of the grade at Lawrence street. The distance from Lawrence to Prospect street is approximately 632 feet, and that from the existing stopping point at the foot of the grade to Prospect street approximately 418 feet.

Numerous witnesses for the petitioner testified that they are personally inconvenienced by the failure of northbound cars to stop at Prospect street. One witness estimated that about 50 families, comprising about 250 or 300 persons, would be benefited by a stop at the point in question. It was asserted that the stopping point at the foot of the grade is undesirable on account of its surroundings, especially for women and children. While no accidents were reported, it is apparent that passengers do not feel safe in waiting for cars or alighting at this point at night.

Respondent's general superintendent testified that on account of the steep grade and the curve in the track it would be difficult to start up the interurban cars after the stop at Prospect street

had been made. This condition would be more aggravated in winter during sleet or snow storms. At such times it might be possible for a motorman to lose control of his car and allow it to back down the hill, which would be particularly dangerous on account of the reverse curve at the foot of the grade. He stated that the four motor equipment used on the interurban cars is not sufficient for starting on grades as steep as the one under consideration in all kinds of weather.

From an examination of the testimony and upon investigation it is the opinion of the Commission that northbound interurban cars can be stopped at the point designated in the petition to receive and discharge passengers during the greater portion of the year, without jeopardizing the public or interfering with the maintenance of schedules. Conditions which would make it difficult to start a car after making such a stop are not likely to exist except during the winter months. Such a stop is necessary for the reasonable service of the public during such period as it can be safely made. Patrons should be advised that cars will not stop at the designated point during the winter months, by a sign conspicuously placed on the cross wire supporting the trolley or in some other suitable place.

It is therefore ordered that the respondent, the Wisconsin Traction, Light, Heat, & Power Company, stop its northbound interurban cars at the intersection of Pearl street and Prospect street in the city of Appleton on signal to receive and discharge passengers during the period from May 1st to November 1st each year, and display a conspicuously placed sign at said intersection during the remainder of the year, indicating that northbound cars will not stop.

Railroad Commission of Wisconsin, by Walter Alexander, Halford Erickson, Carl D. Jackson, Commissioners.

WISCONSIN RAILROAD COMMISSION.

EDWARD J. CHROMASTER

v.

MILWAUKEE NORTHERN RAILWAY COMPANY.

Service — Discrimination — Interurban railway — Limited trains.

Failure to stop a limited interurban train at a village is not dis-

criminary where it appears that, on the basis of volume of traffic, several other stations might have an equal claim to such service.

Service — Interurban railway — Limited trains.

The Commission will not interfere to any great extent with through train service on interurban railways, having in mind the purposes for which a limited service is operated, and the necessity of maintaining this type of service for the convenience and encouragement of through travel and for competition with similar service maintained by steam railroads.

[February 13, 1915.]

PROCEEDINGS to compel the stopping of limited interurban passenger trains at a certain point; complaint dismissed.

By the **Commission**: The petition alleges in substance that the passenger service rendered by the Milwaukee Northern Railway Company at the village of Mequon in Ozaukee county is inadequate and discriminatory in that said company refuses to stop its limited interurban trains at that station. The Commission is therefore asked to take such action as it deems just in the premises.

The respondent in its answer denies that its passenger service at Mequon is inadequate or discriminatory, and asks that the complaint be dismissed.

Hearings were held at Milwaukee on October 19, 1914, and November 18, 1914. Edward J. Chromaster appeared in his own behalf and E. H. Bottum and F. W. Walker for the respondent.

The question of stopping limited interurban trains at Mequon was considered on complaint of the present petitioner in 1911 among other matters, and under date of March 12, 1912, a decision was issued in which the following language was used: "We cannot see wherein petitioner is discriminated against by the fact that limited trains do not stop at Mequon and all other stations between that point and Milwaukee. Limited trains for through passengers are essential to efficiency of service on long-haul traffic, for if they should stop at every station on the line their usefulness would be impaired, and no advantage whatever would accrue in the establishment of such class of service." 8 Wis. R. C. R. 754.

Petitioner testified that conditions at Mequon have changed

materially since the hearing in the original case. He stated that the population of the village of Mequon has increased by fifty-nine persons, and estimated on the basis of observations made on morning and evening trains during a limited period, that the number of persons boarding and alighting from the interurban cars at that station during the year 1914 was 10,944 greater than in 1911, showing an increase of approximately 40 per cent. Respondent introduced a statement of its passenger earnings at various stations in which the following data are given:

Passenger Earnings.

Station.	1911.	1912.	1913.	14 mo. 1914.
Brown Deer	\$3,555.73	\$3,692.16	\$3,776.65	\$3,382.97
Mequon	767.78	951.08	1,033.59	706.52
Thiensville	2,311.04	2,639.55	6,046.75	5,184.27

Petitioner asserted that many through passengers who now travel on the limited trains via Thiensville would board the trains at Mequon if they could, and that the revenue created by them should be credited to Mequon. Data submitted by the respondent showing the number of passengers boarding and alighting from all trains at Thiensville, Mequon, and four highway crossings, have been summarized in the following table:

	Oct. 19	Oct. 20	Oct. 21	Oct. 22	Oct. 23	Total	Ave.
Total on and off Mequon ..	51	43	49	37	49	229	46
“ “ “ “ Highway 1	21	25	20	31	31	128	27
“ “ “ “ “ 2	70	39	63	58	39	269	54
“ “ “ “ “ 3	54	31	45	41	17	188	38
“ “ “ “ “ 9	46	54	47	37	31	215	43
“ “ “ “ All trains							
at Thiensville	168	145	143	146	103	705	141
Total on and off Locals							
only at Thiensville	103	100	98	84	60	445	89
Total on and off Limited							
only at Thiensville	35	45	45	62	43	230	46
Highways having more							
passengers on and off							
than Mequon	2	1	1	3	0	7	1.4

These data indicate that on the basis of volume of traffic several other stations might claim the service of limited trains upon equal grounds with Mequon. Moreover, Mequon is but a relatively short distance from Thiensville, which is a regular stop for the limited trains. From the center of the village of Mequon to the station at Thiensville is 3,615 feet, as opposed to 910

feet from the same point to the station at Mequon. Thus, persons starting at the center of the village of Mequon are obliged to travel 2,505 feet further for the use of limited service than would be the case if the limited trains were stopped at Mequon.

Having in mind the purposes for which a limited service is operated, and the necessity of maintaining this type of service for the convenience and encouragement of through travel, and for competition with similar service maintained by steam railroads, it seems advisable not to interfere with such service to any great extent. The introduction of one additional stop for limited trains would probably add very little to the schedule time, but the accumulation of several additional stops would be likely to seriously impair the limited service.

In the light of the testimony and the numerous exhibits offered, and upon investigation, it is our judgment that the passenger service furnished by the respondent at Mequon is adequate, and that such service is not discriminatory by reason of the fact that limited trains do not stop at Mequon. The conditions of traffic at Mequon do not show a sufficient change since 1911 to warrant a deviation from the conclusion reached in the original case.

It is therefore ordered that the complaint herein be, and the same is hereby, dismissed.

Railroad Commission of Wisconsin, by Walter Alexander, Halford Erickson, Carl D. Jackson, Commissioners.

WISCONSIN RAILROAD COMMISSION.

CHRIST WOEHNSNER

v.

CITY OF MILWAUKEE ET AL.

[Supplemental Order.]

Rates — Street railways — Package tickets — Interpretation of former order.

It was the intent and purpose of the order entered in this case on the 30th day of January, 1915, also to rescind such part of any orders of the Commission entered in the case of Cusick v. Milwaukee Electric R. & Light Co. 10 Wis. R. C. R. 314, Koenig v. Milwaukee Electric R. & Light Co. 10 Wis. R. C. R. 337, and East Milwaukee v.

Milwaukee Electric R. & Light Co. 10 Wis. R. C. R. 358, as might otherwise require the Milwaukee Electric Railway & Light Company or the Milwaukee Light, Heat, & Traction Company to discontinue the ticket rate for fare within the single-fare limits of the city of Milwaukee existing on August 23, 1912, or to sell tickets in packages of 13 for 50 cents.

[February 17, 1915.]

By the **Commission**: Under date of January 30, 1915, an order was entered in the above-entitled matter as follows: "It is therefore ordered that the order of this Commission of August 23, 1912 (10 W. R. C. R. 1, 205), to the Milwaukee Electric Railway and Light Company, discontinuing the ticket rate of twenty-five for \$1, and substituting therefore a ticket rate of thirteen for 50 cents, is hereby rescinded."

It was the intention of the Commission in entering this order to rescind the requirement of the Milwaukee Electric Railway & Light Company selling tickets in packages of 13 for 50 cents, and to put into effect the ticket rate of 25 for \$1, which was ordered to be discontinued by the order of August 23, 1912. Simultaneously with the entry of the order in the case of Milwaukee v. Milwaukee Electric R. & Light Co. 10 Wis. R. C. R. 1, 305, there were also entered orders in the case of Cusick v. Milwaukee Electric R. & Light Co. 10 Wis. R. C. R. 314, Koenig v. Milwaukee Electric R. & Light Co. 10 Wis. R. C. R. 337, and East Milwaukee v. Milwaukee Electric R. & Light Co. 10 Wis. R. C. R. 358. In each of these orders provision was made similar to that in the City of Milwaukee Case, that the respondent company should discontinue the then ticket rate and sell tickets in packages of 13 for 50 cents. These orders have already become subject to the later order of the Commission made in Re Milwaukee Suburban & Interurban R. Rates, 13 Wis. R. C. R. 475. It was the purpose of the Commission that so much of any previous order as might contravene the effect of the aforesaid order of January 30, 1915, should be rescinded thereby. Therefore to avoid any possible misinterpretation, it is ordered that it was and is the intent and purpose by the order entered in the above-entitled matter on the 30th day of January, 1915, also to rescind such part of any orders of the Commission entered in the case of Cusick v. Milwaukee Electric R. & Light Co.; Koenig

v. Milwaukee Electric R. & Light Co., and East Milwaukee v. Milwaukee Electric R. & Light Co., — *supra*, as might otherwise require the Milwaukee Electric Railway & Light Company or the Milwaukee Light, Heat, & Traction Company to discontinue the ticket rate for fare within the single-fare limits of the city of Milwaukee existing on August 23, 1912, or to sell tickets in packages of 13 for 50 cents. The order herein entered shall be effective and in force upon the same date as the original order of January 30, 1915.

Railroad Commission of Wisconsin, by Halford Erickson, Carl D. Jackson, Commissioners.

Note.—For original opinion and order, see *ante*, 270.

WISCONSIN RAILROAD COMMISSION.

NORDBERG MANUFACTURING COMPANY

v.

CHICAGO, MILWAUKEE, & ST. PAUL RAILWAY COMPANY.

Statute of limitations — Reparation for overcharge.

A statute requiring complaint as to overcharges for transportation to be made within two years from the time of exaction does not apply where the petitioner, by letter and notice, has brought his claim to the attention of the Commission within the limit prescribed by law.

[February 17, 1915.]

PROCEEDING to obtain reparation for overcharge; granted.

By the **Commission**: On January 28, 1915, the Commission issued an order in the above-entitled case directing the respondent company to make reparation for excess charges upon two carloads of sand shipped from Portage to Milwaukee, in the sum of \$11.80.

The petitioner had asked for reparation upon two other carloads of sand shipped by it earlier than the two upon which a refund was ordered, but the Commission found that more than two years had elapsed between the date of the shipment and the filing of the claim with the Commission, and hence declined to order the refund upon these other two cars.

Since the order of January 28, 1915, in the case was issued, however, a letter and notice to the Commission has come to light which proved that the petitioner had brought its claim to the attention of the Commission within the time limit prescribed by law. This letter bears date of October 15, 1913, and the two cars in question were shipped on August 10, 1912, and September 14, 1912.

This Commission in an order issued on June 24, 1912, applied crushed stone rates fixed by a previous order (April 24, 1912) to shipments of sand. This rate is 2.82 cents per cwt. for the service in question. As on the two cars in question, the rate charged the petitioner was 3.75 cents per cwt. the overcharge was \$12.75.

It is therefore ordered that the Chicago, Milwaukee, & St. Paul Railway Company refund to the Nordberg Manufacturing Company the said sum of \$12.75.

Dated at Madison, Wisconsin, this 17th day of February, 1915.

Railroad Commission of Wisconsin, by Halford Erickson, Carl D. Jackson, Walter Alexander, Commissioners.

Note.—The statute referred to in the original proceeding, *Nordberg Mfg. Co. v. Chicago, M. & St. P. R. Co.* January 28, 1915, is § 1797—37 m. of the Wisconsin Statutes of 1913.

In *Wisconsin Sugar Co. v. Minneapolis, St. P. & S. Ste. M. R. Co.*, Chicago, Milwaukee, & St. Paul Railway, reparation to the amount of \$33.58 was granted on eight carloads of sugar beets from Honey creek and on two from Hamilton to Menominee Falls.

UNITED STATES SUPREME COURT.

ILLINOIS CENTRAL RAILROAD COMPANY, Appt.,

v.

C. L. DE FUENTES, W. L. Foster, and Overton Cade, as Commissioners and Members of the Railroad Commission of Louisiana.

[No. 423.]

Commerce—Conflicting state and Federal regulation—Interchange of railway traffic.

Congress has so far undertaken to regulate the subject as to invalidate, as an unlawful regulation of interstate commerce, an order of a

state railroad Commission under which a carrier may be required, upon demand of a carrier or shipper, and on terms fixed by the Commission, to switch empty cars from any connection with a competing interstate railway to a designated side track within its own terminals in a city, for the purpose of being loaded there with goods intended for interstate commerce, and when so loaded, to move the same back to the competitor's line for continued transportation to another state, and also to accept from competing interstate lines at points within the city loaded cars brought from other states, and place them on its own side track, although such side track was the real destination contemplated at the time of the original shipment.

[Argued January 8, 1915; Decided February 1, 1915.]

APPEAL from the District Court of the United States for the Eastern District of Louisiana to review a decree dismissing the bill in a suit to enjoin the enforcement of an order of the Louisiana Railroad Commission, regulating the interchange of railway traffic. **Reversed.**

The facts are stated in the opinion.

Messrs. Blewett Lee, Robert V. Fletcher, Hunter C. Leake, and Gustave Lemle for appellant.

Mr. Wylie M. Barrow and Mr. Rutlin G. Pleasant, Attorney General of Louisiana, for appellees.

Mr. Justice McReynolds delivered the opinion of the court:

After a full hearing and investigation the Railroad Commission of Louisiana, on August 8, 1903, promulgated the following, known as order No. 295:

"No railroad company operating in the state of Louisiana shall refuse or decline to switch cars for any other railroad with which it connects, or any shipper or consignee, at rates approved or established by the Commission, whether such cars are to be loaded with freight to be shipped out of the state, or are loaded with freight shipped into the state. All tariffs for the 'service' of switching cars in the state of Louisiana shall be filed with the Commission, within thirty days from the date of this order, and all the Commission's rules and orders relative to rates and changes in rates will also apply to switching charges."

By a proceeding against the members of the Commission, commenced in the United States circuit court, eastern district of Louisiana, February 10, 1904, the appellant, a common carrier of freight and passengers operating lines in Louisiana, attacked

the validity of this order upon the ground that it is an unlawful attempt to regulate interstate commerce and for other reasons, and prayed that defendants be restrained from enforcing it. Shortly thereafter a temporary injunction was granted, to remain effective pending the cause or until otherwise directed; and on October 6, 1904, defendants answered, denying all the alleged equities. The record discloses no further action by either party until April, 1913, when a rather meager and unsatisfactory agreed statement of facts was filed. The trial court dismissed the bill without prejudice,—January, 1914,—saying that the questions involved had been indirectly decided by this court in *Grand Trunk R. Co. v. Michigan R. Commission*, 231 U. S. 457, 58 L. ed. 310, 34 Sup. Ct. Rep. 152. From this decree a direct appeal was taken and a supersedeas was allowed.

The extraordinary delay in bringing the cause to final hearing is not explained; and in the circumstances we deem it quite sufficient briefly to indicate and decide the controlling question.

With the consent of the proper local authorities appellant constructed and now operates at New Orleans extensive terminals, including switch and side tracks, warehouses and yards. These are essential to the proper conduct of its large interstate and foreign business; and when it brings freight there the cars are placed on its various switch tracks, to be unloaded by the consignees. At New Orleans physical connections exist between appellant's tracks and the lines of competitive railroads leading therefrom to many states; if order No. 295 is enforced, its switch tracks will be subjected to use by such railroads; more cars will pass over them; and its power to comply with obligations to patrons will be hindered. Together with the various railroads, appellant has published and now has in effect terminal tariffs covering switching; these include no rates for transporting freight to or from the city, "but simply cover the charges made for switching cars from the depot or yard of one railroad company to points on its terminals." Upon orders of the consignees certain switch movements are made entirely within the switching limits of the city, between points one or both of which may be located upon the terminals of the Illinois Central, and for these charges are made, varying according to distance, with an addition of \$3 per car for rental. When a car

loaded with interstate freight arrives at New Orleans, the consignee is first notified that the contents are ready for delivery at the carrier's depot or warehouse. After calling and paying the charges, he gives to the agent of the railroad transporting the shipment an order directing that the cars be switched and placed on some terminal or industrial track for delivery. This order is then submitted to the Illinois Central Railroad, and in due course is executed by it.

From the foregoing summary of the facts stipulated it fairly appears that obedience to order No. 295 would require appellant, upon demand of a carrier or shipper, and on terms fixed by the state commission, to switch empty cars from any connection with a competing interstate railroad to a designated side track within its own terminals for the purpose of being loaded there with goods intended for interstate commerce, and when so loaded to move the same back to the competitor's line for continued transportation to another state. Likewise appellant would be required to accept from competing interstate lines at points within the city loaded cars brought from other states, and place them on its own side tracks, although such track was the real destination contemplated at the time of the original shipment. Switching movements of this kind (we do not now inquire as to others), constitute a part of interstate commerce the regulation of which Congress has undertaken, and consequently the order of the state Commission transcends the limits of its powers.

When freight actually starts in the course of transportation from one state to another it becomes a part of interstate commerce. The essential nature of the movement, and not the form of the bill of lading, determines the character of the commerce involved. And generally when this interstate character has been acquired it continues, at least, until the load reaches the point where the parties originally intended that the movement should finally end. *McNeill v. Southern R. Co.* 202 U. S. 543, 559, 50 L. ed. 1142, 1147, 26 Sup. Ct. Rep. 722; *Southern P. Terminal Co. v. Interstate Commerce Commission*, 219 U. S. 498, 527, 55 L. ed. 310, 320, 31 Sup. Ct. Rep. 279; *Railroad Commission v. Worthington*, 225 U. S. 101, 110, 56 L. ed. 1004, 1008, 32 Sup. Ct. Rep. 653; *Texas & N. O. R. Co. v. Sabine*

Tram Co. 227 U. S. 111, 126, 57 L. ed. 442, 448, 33 Sup. Ct. Rep. 229; Railroad Commission v. Texas & P. R. Co. 229 U. S. 336, 341, 57 L. ed. 1215, 1218, 33 Sup. Ct. Rep. 837.

The contention for appellees that switching cars at junctions and terminals "is only interstate commerce when performed as a part of the interstate movement on a through rate or bill of lading under tariff authority" is contrary to the doctrine established by opinions of this court in the cases cited above. We cannot undertake, as suggested, to dissect the contested order, and point out whether any part of it constitutes "a workable scheme for the regulation of intrastate traffic." Problems relating alone to commerce wholly within the state must be left to the discretion of the state Commission, to be exercised upon a view of all existing, relevant facts and circumstances.

The present controversy is not controlled by *Grand Trunk R. Co. v. Michigan R. Commission*, *supra*. The issues in the two cases are essentially different. There the attack was upon an order of the state Commission "suspensory only of the tariff of the appellants, not a final determination against it, or of the conditions which might or might not justify it;" and the question was "whether, under the statutes of the state of Michigan, appellants can be compelled to use the tracks it owns and operates in the city of Detroit for the interchange of intrastate traffic." The movement actually regulated was held to be intrastate commerce. It took place within Detroit, but between points sufficiently far apart to constitute genuine transportation; and, treating it as a local matter, the railway company had applied special tariffs thereto until withdrawn because of disagreement with shippers and Commission.

The original bill should have been sustained and a permanent injunction awarded. The decree below is accordingly reversed, and the cause remanded for further proceedings in accordance with this opinion.

Reversed.

UNITED STATES SUPREME COURT.

WILMINGTON TRANSPORTATION COMPANY, Plff. in Err.,
v.
RAILROAD COMMISSION OF CALIFORNIA.

[No. 369.]

*Commerce — State regulation — Rates for water transportation —
Course traversing high seas.*

The absence of Federal regulation of rates for water transportation unconnected with transportation by railroad leaves a state free to prescribe reasonable rates for the transportation of passengers and goods wholly by water between two ports in the same state, over a course which traverses the high seas.

[Argued December 15 and 16, 1914; Decided February 1, 1915.]

IN ERROR to the Supreme Court of the State of California to review a judgment which, on certiorari, sustained the authority of the state Railroad Commission to prescribe reasonable rates for carriage by water between two ports in the state over a course traversing the high seas. Affirmed.

See same case below, 166 Cal. 741, 137 Pac. 1153.

The facts are stated in the opinion.

Messrs. Edward E. Bacon and James A. Gibson for plaintiff in error.

Messrs. Max Thelen, Douglas Brookman, and Allan P. Mathew for defendant in error.

Mr. Justice Hughes delivered the opinion of the court:

The Wilmington Transportation Company, a corporation organized under the laws of the state of California, is engaged as a common carrier of passengers and goods by sea, between San Pedro, on the mainland, and Avalon, on Santa Catalina island, both places being within the county of Los Angeles, in that state. Merchants at Avalon, insisting that the rates charged for this transportation were unreasonable, presented their complaint to the Railroad Commission of the State of California, and asked that reasonable rates be fixed under the public utilities act of 1911. Stat. (Cal.) 1911, Ex. Sess. p. 18. The Transportation Company challenged the authority of the Commission upon the

ground that the business was subject exclusively to the regulating power of Congress. The Commission overruled the contention, and its authority to prescribe reasonable rates between these ports of the state was sustained on writ of review by the state court. 166 Cal. 741, 137 Pac. 1153. The case has been brought here on error.

The vessels of the plaintiff in error, in their direct passage between the ports named, must traverse the high seas for upwards of 20 miles. Adopting the statement of the Commission, the supreme court of the state puts the case thus: "They do not touch at any other port, either of the United States or of any foreign country. They do not transfer their passengers or freight to any other vessel, or receive the same from any other vessel in their course. They do not on the voyage take on or put off any article of commerce. While a portion of the voyage is on the high seas, the navigation thereof is merely incidental to the real purpose of the voyage, which is to ply between two ports, both of which are located in the same county in this state."

Relying upon *Lord v. Goodall*, N. & P. S. S. Co. 102 U. S. 541, 26 L. ed. 224, the plaintiff in error contends that transportation over the high seas is "commerce with foreign nations" in the constitutional sense. See *Lehigh Valley R. Co. v. Pennsylvania*, 145 U. S. 192, 203, 36 L. ed. 672, 675, 4 Inters. Com. Rep. 87, 12 Sup. Ct. Rep. 806; *The Abby Dodge*, 223 U. S. 166, 176, 56 L. ed. 390, 393, 32 Sup. Ct. Rep. 310. But if it be assumed for the present purpose that the power of Congress extends to the subject of this controversy, the fact remains that the power has not been exercised. The provisions of the Federal statutes relating to vessels do not go so far, and the Interstate Commerce Commission has not been authorized to prescribe rates for water transportation unconnected with transportation by railroad. 36 Stat. at L. 539, 545, chap. 309, Comp. Stat. 1913, § 993. In this aspect, the question is whether the mere existence of the Federal power, that is, while it is dormant, precludes the exercise of state authority to prevent exorbitant charges with respect to this traffic which has its origin and destination within the limits of the state.

It is urged that the fixing of rates is a regulation of the commerce involved, and hence, of necessity, is repugnant to the Fed-

eral authority, although the latter be unexercised. This proposition, however, as has frequently been pointed out, is too broadly asserted if no regard be had to the differences in the subject which, by virtue of the commerce clause, are within the control of Congress. Thus, vessels engaged in foreign commerce have been compelled to submit to state requirements as to pilotage and quarantine since the foundation of the government, although it could not be denied that these requirements were regulations which Congress could at any time displace. *Cooley v. Port Wardens*, 12 How. 299, 317, 319, 13 L. ed. 996, 1004; *Ex parte Mc Niel*, 13 Wall. 236, 240, 20 L. ed. 624, 625; *Wilson v. McNamee*, 102 U. S. 572, 26 L. ed. 234; *Anderson v. Pacific Coast S. S. Co.* 225 U. S. 187, 195, 56 L. ed. 1047, 1051, 32 Sup. Ct. Rep. 626; *Morgan, L. & T. R. S. S. Co. v. Board of Health*, 118 U. S. 455, 465, 30 L. ed. 237, 242, 6 Sup. Ct. Rep. 1114; *Compagnie Française de Navigation à Vapeur v. State Bd. of Health*, 186 U. S. 380, 387, 46 L. ed. 1209, 1213, 22 Sup. Ct. Rep. 811. In these cases, it was apparent that the subject was of a local nature, admitting of diversity of treatment according to local necessities, and it could not be supposed that it was the intention to deny to the states the exercise of their protective power, in the absence of Federal action. It is not necessarily determinative that the vessels in the course of the transportation in question pass beyond the boundary of the state. See *The Hamilton (Old Dominion S. S. Co. v. Gilmore)* 207 U. S. 398, 405, 52 L. ed. 264, 270, 28 Sup. Ct. Rep. 133. In the case of ferries over boundary waters, it has always been recognized that ferriage from the shore of a state is peculiarly a matter of local concern, and, while undoubtedly Congress may regulate interstate transportation by ferry as well as other interstate commercial intercourse, still, because of the nature of the transportation and the local exigency, a state, in the absence of Federal regulation, may prevent unreasonable charges for carriage by ferry from a point of departure within its borders. *Port Richmond & B. P. Ferry Co. v. Hudson County*, 234 U. S. 317, 332, 58 L. ed. 1330, 1336, 34 Sup. Ct. Rep. 821; *Sault Ste. Marie v. International Transit Co.* 234 U. S. 333, 342, 58 L. ed. 1337, 1341, 34 Sup. Ct. Rep. 826. The rule which the plaintiff in error invokes is not an arbitrary rule, with arbitrary exceptions, but is one that has its

basis in a rational construction of the commerce clause. As repeatedly stated, it denies authority to the state in all cases where the subject is of such a nature as to demand that, if regulated at all, its regulation should be through a general or national system, and that it should be free from restraint or direct burdens save as it is constitutionally governed by Congress; and on the other hand, as to those matters which are distinctively local in character, although embraced within the Federal authority, the rule recognizes the propriety of the reasonable exercise of the power of the states, in order to meet the needs of suitable local protection, until Congress intervenes. *Cooley v. Port Wardens*, 12 How. 299, 317, 319, 13 L. ed. 996, 1004; *Ex parte McNeil*, 13 Wall. 236, 240, 20 L. ed. 624, 625; *Welton v. Missouri*, 91 U. S. 275, 280, 23 L. ed. 347, 349; *Mobile County v. Kimball*, 102 U. S. 691, 697, 26 L. ed. 238, 239; *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196, 204, 29 L. ed. 158, 162, 1 Inters. Com. Rep. 382, 5 Sup. Ct. Rep. 826; *Bowman v. Chicago & N. W. R. Co.* 125 U. S. 465, 481, 31 L. ed. 700, 705, 1 Inters. Com. Rep. 823, 8 Sup. Ct. Rep. 689, 1062; *Minnesota Rate Cases* (*Simpson v. Shepard*) 230 U. S. 352, 399-403, 57 L. ed. 1511, 1541-1543, 48 L.R.A.(N.S.) 1151, 33 Sup. Ct. Rep. 729; *Port Richmond & B. P. Ferry Co. v. Hudson County*, *supra*.

It was by the application of these principles that it was decided that a state could not prescribe rates for interstate railroad transportation, even with respect to that portion of the route which was within its own territory. As was said by Mr. Justice Miller, in delivering the opinion of the court upon this question (*Wabash, St. L. & P. R. Co. v. Illinois*, 118 U. S. 557, 577, 30 L. ed. 244, 251, 1 Inters. Com. Rep. 31, 7 Sup. Ct. Rep. 4), after recognizing the authority of the state to prescribe intrastate rates: "But when it is attempted to apply to transportation through an entire series of states a principle of this kind, and each one of the states shall attempt to establish its own rates of transportation, its own methods to prevent discrimination in rates, or to permit it, the deleterious influence upon the freedom of commerce among the states and upon the transit of goods through those states cannot be overestimated. That this species of regulation is one which must be, if established at all, of a general and national character, and cannot be safely and wisely re-

mitted to local rules and local regulations, we think is clear from what has already been said." And the same conclusion has been reached with respect to the fixing of rates for railroad transportation which, while beginning and ending in the same state, passes through the territory of another state. The regulation of such rates cannot be "split up" according to the jurisdiction of the respective states over the track; there must be one rate fixed by one authority. *Hanley v. Kansas City Southern R. Co.* 187 U. S. 617, 620, 47 L. ed. 333, 335, 23 Sup. Ct. Rep. 214.

We are not here dealing with the case of property which is in course of continuous transportation to another state or to a foreign country. *The Daniel Ball*, 10 Wall. 557, 19 L. ed. 999; *Railroad Commission v. Worthington*, 225 U. S. 101, 56 L. ed. 1004, 32 Sup. Ct. Rep. 653; *Texas & N. O. R. Co. v. Sabine Tram Co.* 227 U. S. 111, 124, 57 L. ed. 442, 447, 33 Sup. Ct. Rep. 229; *Railroad Commission v. Texas & P. R. Co.* 229 U. S. 336, 57 L. ed. 1215, 33 Sup. Ct. Rep. 837. It must be assumed upon this record that the state claims the right to exercise its authority only as to transportation between the mainland and the island, and solely with respect to such shipments over this route as are local to the state, both as to the beginning and the end of the transportation. There is no passage through the territory of another state; the transportation, in its entire course, is subject to a single authority,—either that of Congress or that of the state,—and the latter would yield to the exercise of the former. The sovereignty of no other jurisdiction is encountered. It is plainly of importance to the people of the state that this local traffic should be carried upon reasonable terms; and if, in the case of a ferry, a state may protect its people from extortion although the ferriage is to the shore of another state, there is, in our judgment, no ground for saying that where the transportation is between two places in the same state, it is less a subject for local action, in the absence of Federal interposition, because the voyage is over a stretch of open sea. Congress has not attempted to intervene, and we find no basis for the conclusion that the subject is one which must be deemed to be wholly free from regulation unless Congress deals with it. On the contrary, it is precisely of that local character which permits it to be left appropriately to the care of the state.

A different conclusion was reached at circuit in *Pacific Coast S. S. Co. v. Railroad Comrs.* 9 Sawy. 253, 18 Fed. 10, but, for the reasons stated, we are unable to agree with it. The judgment of the Supreme Court of California is affirmed.

Judgment affirmed.

CALIFORNIA RAILROAD COMMISSION.

IN RE APPLICATION OF SOUTHERN PACIFIC COMPANY.

[Decision No. 2062; Application No. 1306.]

Evidence — Commission rate — Presumption of reasonableness.

The same presumption of reasonableness attaches to rates established by a state Commission as to rates voluntarily established and maintained by carriers.

Evidence — Comparison of rates — Burden of proof of unreasonableness.

A railroad company does not sustain the burden of proving that a rate on a certain commodity between designated points in one state is unreasonably low, by comparing the car mile earnings on such commodity in relation to the car mile earnings on all commodities with the relative car mile earnings on the same commodity for a single distance in another state.

Railroad rates — Cotton — Minimum carload rates.

A railroad company was authorized to increase the minimum carload rate on uncompressed cotton from Calexico and Glamis to San Francisco, and from Glamis to Los Angeles and San Pedro, from 16,000 to 20,000 pounds, upon condition that the rate on uncompressed cotton from Glamis to San Pedro and Los Angeles be reduced from 50 cents to 40 cents per 100 pounds, concurrently with the increase in the minimum carload weight.

Rates — Proceeding to increase — Power of Commission as to effective relief.

In a proceeding under the public utilities act for authority to make increases in rates and minima, the jurisdiction of the Commission is confined to determining from the evidence whether the proposed increases are justified; and having determined that question, it may not independently grant affirmative relief with respect to establishing rules relating to the compression and concentration of cotton.

Railroad rates — Cotton — Reasonableness — Increase denied.

The Commission refused to allow a railroad company to increase its rate on cotton and cotton linters from Calexico to Los Angeles and San Pedro from 40 cents to 50 cents per 100 pounds.

[January 11, 1915.]

APPLICATION for permission to increase rates, and to increase minimum carload weights on cotton and cotton linters; granted in part and denied in part.

Appearances: Geo. D. Squires for applicant; E. P. Riggle for Imperial Valley Cotton Growers Association; L. S. Atkinson for Munoprio & Company and the Imperial Valley shippers; J. J. Chappell for the farmers and landowners; Albert Lee Stephens and C. B. Penn for the city of Los Angeles.

REPORT OF THE COMMISSION.

Edgerton, Commissioner: Southern Pacific Company maintains the following rates on cotton and cotton linters from Glamis and Calexico to Los Angeles, San Pedro, and San Francisco:

Article	From	To	Rate in Cents per 100 Pounds
Cotton and cotton linters, in bales, uncompressed, minimum carload weight 20,000 pounds	Calexico	Los Angeles San Pedro	40 cents
Cotton, in bales, uncompressed, minimum carload weight 16,000 pounds ...	Glamis	Los Angeles	50 cents
Cotton, in bales, uncompressed, minimum carload weight 16,000 pounds ...	Calexico Glamis	San Francisco	65 cents

By this petition it seeks authority to change these items in the following manner and to publish the following rates:

Article	From	To	Rate in Cents per 100 Pounds
Cotton and cotton linters, in bales, uncompressed, minimum carload weight 20,000 pounds	Calexico Glamis	Los Angeles San Pedro	50 cents
Cotton and cotton linters, in bales, uncompressed, minimum carload weight 20,000 pounds	Calexico Glamis	San Francisco	65 cents

These changes if authorized would have the effect of increasing the rate on uncompressed cotton from Calexico to Los Angeles and San Pedro from 40 cents to 50 cents per 100 pounds, and advancing the minimum carload weight on uncompressed cotton from Calexico and Glamis to San Francisco, and from

Glamis to Los Angeles and San Pedro, from 16,000 pounds to 20,000 pounds. The rate which the applicant seeks to increase was established by the Commission in Case 463, Chappell v. Southern P. Co.

If permitted to make the changes proposed in the rates and minima applying on uncompressed cotton, the applicant states that it contemplates establishing at the same time the following rates on compressed cotton:

Article	From	To	Rate in Cents per 100 Pounds
Cotton and cotton linters, in bales, compressed to a density of $22\frac{1}{2}$ pounds per cubic foot, minimum carload weight 32,000 pounds	Calexico Glamis	Los Angeles San Pedro	40 cents
Cotton, in bales, compressed to a density of $22\frac{1}{2}$ pounds per cubic foot, minimum carload weight 32,000 pounds	Calexico Glamis	San Francisco	55 cents

These proposed changes would effect a reduction of 10 cents per 100 pounds in the rate on cotton, compressed to a density of $22\frac{1}{2}$ pounds per cubic foot in carload lots of 32,000 pounds from Glamis to Los Angeles and San Pedro, and from Calexico and Glamis to San Francisco. However, no corresponding reduction would be brought about in the rate on cotton compressed to a density of $22\frac{1}{2}$ pounds per cubic foot from Calexico to Los Angeles and San Pedro, as under the present rate adjustment it would be transported at the rate of 40 cents per 100 pounds.

The carrier also states that, as the greater part of the California cotton crop will find its market in the Orient, and be transported thereto by ocean carriers from the California ports to which the rates apply, and will in the interest of economy be compressed before being shipped by such carriers because of the difference in the ocean rates on the compressed and uncompressed cotton, amounting to practically \$5 per ton, the only effect of the increase in the rate and minimum on uncompressed cotton will be to induce shippers to compress the cotton at or near the point of its production to the density required, thereby enabling them to ship the cotton at the lower rate it proposes to establish on

compressed cotton, and to secure to the carrier an increase in the carloading of approximately 12,000 pounds.

It is alleged by the petitioner that the rates and minima which it seeks to increase are too low for service rendered in transporting this commodity between the points specified; and in support of this allegation it submits comparisons with rates for the transportation of cotton similar distances in the state of Texas. Taking the rate of 51 cents per 100 pounds applying on compressed cotton from Austin to Galveston, Texas, a distance of approximately 215 miles, in connection with the alleged average loading of 32,000 pounds to 34,000 pounds per car, it calculates that the car mile earning on cotton for this distance in Texas, after deducting 10 cents for compression, approximates 61 cents to 64 cents, whereas the average car mile earning on all commodities transported in Texas during the year ending June 30, 1913, was but 17.32 cents. These earnings per car mile the petitioner contrasts with the earnings on cotton from Callexico, as a typical shipping point, to San Pedro, a distance of 250 miles, upon a minimum carload of 20,000 pounds at the proposed rate of 50 cents per 100 pounds, which approximates 40 cents per car mile, and with the average car mile earnings on all commodities on the entire Southern Pacific Company system, of 21 cents. In this connection it urges that the rates in Texas are abnormally low as a result of continued reductions by the regulating body of that state, and that the cotton tonnage in Texas is very large,—in fact, contributes more tonnage to the total traffic of the state than any other single commodity, whereas in California the cotton tonnage constitutes but a small proportion of the total tonnage carried, and in relation to the tonnage of cotton transported in Texas is inconsiderable. From these facts petitioner concludes that the comparison of the car mile earnings on cotton of itself, and when considered in relation to the car mile earnings on all commodities in the respective states, demonstrates that the rates in California are too low. The petitioner also contends this Commission erred in establishing the rate of 40 cents per 100 pounds on cotton from Callexico to San Pedro and Los Angeles, which the petitioner here seeks to increase, in so far as the average car mile earnings on the entire Southern

Pacific system were taken to measure a reasonable rate on cotton from Calexico to San Pedro.

Representatives of Imperial cotton growers and shippers of the city of Los Angeles appeared at the hearing in opposition to the proposed changes. The city of Los Angeles contends that the present rates on uncompressed cotton from Calexico to Los Angeles and San Pedro are not low when considered in relation to the present rates on that commodity from Calexico to San Francisco, the distance from Calexico to San Pedro being approximately 250 miles, whereas the distance from Calexico to San Francisco is 695 miles, in part over a considerable mountain range. The applicant alleges in this connection that the rate from Calexico to San Francisco is abnormally depressed because of water competition between San Pedro and San Francisco, and in no sense should be a measure for the rate to Los Angeles and San Pedro, and that it is necessary to maintain a lower rate relatively to San Francisco to secure for its line the long haul into that port.

The growers and shippers of the Imperial Valley also contend that if the carrier is permitted to increase the rate on uncompressed cotton from Calexico to Los Angeles and San Pedro, and thereafter to apply the present rate only on cotton compressed to a density of $22\frac{1}{2}$ pounds per cubic foot, and thereby force the shippers to compress their cotton before shipping it in order to enjoy that rate of transportation, the carriers should be required to establish, concurrently with the rates on compressed cotton, rules relating to its compression similar to those obtaining in other cotton-growing sections, whereby the compress operators would be made liable for any excess in freight charges due to their failure to compress the cotton sufficiently to entitle it to the lower transportation rate. Protestants state that they have no means of enforcing compress operators to compress the cotton to the required density, as the operators will not always agree to such a condition, and that the carrier is in a position to enforce such a liability by a rule in its tariff. These protestants also urge that the carrier be required to adopt other rules, similar to those in effect on other lines in cotton-shipping sections, relating to the concentration of cotton and the issuance of bills of lading therefor.

The rate of 51 cents per 100 pounds applicable on cotton from Austin to Galveston, Texas, on which petitioner predicates the typical car mile earnings in Texas for a distance similar to that between Callexico and San Pedro, is a blanket rate prescribed by the Railroad Commission of the State of Texas for the transportation of cotton in any quantity for any distance greater than 210 miles. It includes and covers all switching, loading, unloading, or terminal charges incidental to the transportation of the cotton to the Texas ports in addition to the allowance of 10 cents per 100 pounds for compression. The rate from Callexico to San Pedro is a maximum net rate between those points. It does not cover the cost of loading or unloading the cotton, and applies only on a minimum carload of 20,000 pounds.

It appears clear to me that the car mile earnings on the Texas rate for the single distance of 215 miles does not reflect the average result in car mile earnings on this rate. The relatively high car mile earnings shown on this rate might be materially reduced if averaged with the car mile earnings for greater distances to which the same rate also applies. In fact, this is true of all so-called blanket rates, the nearby territory falling within a "blanketed" zone contributing the greater earnings to compensate for the lower earnings to distant territory in such zones. On the other hand, the distance from Callexico to San Pedro is the maximum distance over which the rate of 40 cents per 100 pounds extends, and car earnings thereon would represent the minimum car earnings on that rate.

In view of these circumstances, I am of the opinion that the comparison does not reflect the same conditions, or conclusively indicate that the rate from Callexico to San Pedro is unduly low. Nor am I inclined to concede, as the petitioner suggests, that the Texas rates are abnormally low. The same presumption of reasonableness attaches to rates established by a state Commission as to rates voluntarily established and maintained by carriers.

Under all the circumstances, I am of the opinion that the applicant has failed to sustain the burden of justifying the proposed increase in the rate on uncompressed cotton from Callexico to Los Angeles and San Pedro, and that its petition in that respect should be denied.

The protestants do not dispute that the proposed minimum of

20,000 pounds can be loaded under the present method of packing and shipping cotton without hardship, and I therefore recommend that the petition, in so far as it seeks to increase the minimum carload weight on cotton and cotton linters, in bales, uncompressed, from Calexico and Glamis to San Francisco and from Glamis to Los Angeles and San Pedro from 16,000 to 20,000 pounds, be granted, conditioned upon the applicant's reducing the rate on uncompressed cotton from Glamis to San Pedro and Los Angeles from 50 cents to 40 cents per 100 pounds.

In this proceeding, which is an application under § 63 of the public utilities act for authority to make certain increases in rates and minima, the jurisdiction of the Commission is confined to determining from the evidence whether the proposed increases are justified, and, having determined that question, it may not independently grant the affirmative relief sought by certain protestants herein. It would be useless, therefore, to consider whether in a proper proceeding the carrier can be required to establish the rules relating to the compression and concentration of cotton which the protestants desire.

I recommend the following form of order:

ORDER.

Southern Pacific Company having filed its application for authority to increase its rate for the transportation of uncompressed cotton, carloads, from Calexico to Los Angeles and San Pedro from 40 cents to 50 cents per 100 pounds, and to advance the minimum carload weight on uncompressed cotton from Calexico and Glamis to San Francisco, and from Glamis to Los Angeles and San Pedro, from 16,000 pounds to 20,000 pounds; and a hearing having been held on said application, and a full investigation of the matters and things involved having been made; and the Commission finding that the Southern Pacific Company has failed to justify the proposed increase in rates, but should be granted authority to increase the minimum carload weight as proposed,—

It is hereby ordered that Southern Pacific Company be, and it is hereby, authorized to increase the minimum carload weight on uncompressed cotton from Calexico and Glamis to San Francisco, and from Glamis to Los Angeles and San Pedro, from

16,000 pounds to 20,000 pounds, upon the condition that the rate on uncompressed cotton from Glamis to San Pedro and Los Angeles be reduced from 50 cents to 40 cents per 100 pounds, concurrently with the increase in the minimum carload weight hereby authorized; and

It is further ordered that as to all other matters the application of Southern Pacific Company be, and the same is hereby, denied.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

CALIFORNIA RAILROAD COMMISSION.

IN RE ANNA DELL SEGNO.

[Application No. 1374; Decision No. 2065.]

Valuation — Actual cost to present owner.

The actual cost of land upon which a water utility was located, together with the cost of improvements ordered by the Commission, was taken as the basis of the amount upon which a utility was entitled to earn a return, where the land was acquired without separate payment for the utility property.

Return — Reasonableness.

A water utility was ordered to revise its schedule of rates so as to decrease its minimum monthly charge, and increase certain of its rates for water in excess of the minimum, where its present revenue was insufficient to cover the cost of maintenance and operation, a reasonable depreciation, and interest at 6 per cent per annum on the Commission's valuation, it appearing that the estimated revenue was based upon a year of insufficient water supply, and that there would be a gradual increase in the number of consumers.

[January 13, 1915.]

APPLICATION for investigation of the value of applicant's water plant and the establishment of just and reasonable rates; valuation fixed and rates established.

Appearances: George W. Bush for applicant; N. B. Keys for consumers.

REPORT OF THE COMMISSION.

Edgerton, Commissioner: The applicant herein recites that,

subsequent to a complaint being filed by W. S. Sciever on May 14, 1914, and a public hearing before the Commission, the said applicant, in compliance with her promise made during the hearing, has constructed a new pumping plant and well upon her Ocean Heights property at great expense, and is now supplying an adequate and sufficient amount of potable water to all consumers on her public utility water system in Ocean Park Heights district.

A public hearing in this matter was conducted in Los Angeles on October 27, 1914, and subsequently an inspection of the water system was made by the hydraulic engineer of the Commission. According to testimony in the case, this water system was acquired by the present owner through the purchase of the remaining lots of various subdivisions of land, and without separate payment for the water utility property. However, it is established that a considerable improvement of the system was made at the behest of this Commission, and the expenditures appear to me to have been as follows:

Lot at new plant (Exhibit No. 1)	\$750 00
Account of H. E. Carse	331 00
Bills for materials, labor, etc., during summer of 1914 (Exhibit No. 2)	1,905 00
Motor (Exhibit No. 1)	270 00
	\$3,256 00

Aside from the additions to the plant in the above tabulation, the only construction made at the expense of Anna Dell Segno consists of services to new consumers. These have been paid for by the applicants for service at \$19.50. These services have been installed in alleys, and consist of connection to the main, an average of 10 feet of service pipe, and a meter.

According to all records before the Commission, \$19.50 exceeds the actual cost to the utility by about \$5.

The annual cost of maintenance and operation, judging by exhibits presented by the company, may reasonably be as follows:

Power for operating compressors and pumps	\$510 00
Superintendence and labor	720 00
Office employees	300 00
General supplies and repairs	100 00
Taxes	50 00
Transformer rental	50 00
	\$1,730 00

Allowing interest on recent improvements, \$3,385 at 6 per cent would be \$203; depreciation of the entire plant, I will assume at \$500; making in all for the annual charges to be received \$2,433.

There are at present sixty-nine services, and the company received, for water delivered during the first ten months of 1914, \$1,353.51, and for a full year will probably receive about \$1,600. This has been the result during a year of unsatisfactory water supply, which apparently will not recur.

The present rates are \$1.50 per month minimum for 1,000 cubic feet, and excess water at 15 cents per 100 cubic feet. A lower minimum rate for water at a higher unit price will probably allow a greater number of months' use without increasing the number of connections. There is evidence that a gradual increase of the number of consumers will continue in this locality. By comparison with other districts near, the unit rate is low, and I will recommend changes in the rate accordingly.

There was considerable objection to the quality of the water that has been received by consumers during the period immediately before the hearing in this matter. However, a new pumping plant and connecting main had been installed at the instigation of this Commission, and during the priming of this portion of the system there was unavoidably some admixture of fine particles of soil with the water. Immediately after the hearing an expert of the Commission found that no silt was being pumped, and that by flushing dead ends of the system, cleaning the reservoir, and raising the outlet from the reservoir, conditions should be made entirely satisfactory. These improvements, it is reported, have been made.

I submit herewith the following form of order:

ORDER.

Anna Dell Segno having made application for an investigation of the value of applicant's plant, and establishing just and reasonable rates to be charged for water in Ocean Park Heights district, and a public hearing having been held, and the Commission being fully apprised in the premises,—

It is hereby found as a fact that the rates hereinafter established are just and reasonable rates to be charged by Anna Dell

Segno to consumers from the water system in her ownership and control in Ocean Park Heights district; and basing its order on the foregoing finding of fact, and the further findings of fact set out in the opinion preceding this order,—

It is hereby ordered by the Railroad Commission of the State of California, that the rates to be charged by Anna Dell Segno in the Ocean Park Heights district shall be as follows, to wit:

Minimum per month for use, entitling consumer to	
500 cubic feet	\$1 25
Amounts between 500 cubic feet and 2,000 cubic feet	
per month	20 per 100 cubic feet
Amounts in excess of 2,000 cubic feet per month	15 per 100 cubic feet

The foregoing rates shall become effective on and after February 1, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

CALIFORNIA RAILROAD COMMISSION.

IN RE APPLICATION OF SOUTHERN PACIFIC COMPANY.

[Decision No. 2124; Application No. 1447.]

Rates — Railroad — Discrimination — Interstate versus intrastate shipments — Reicing detained cars.

The maintenance of a charge of \$5 a day for reicing refrigerator cars detained through failure of the shipper, on intrastate shipments, and a charge of \$10 a day for the same service on interstate shipments, is a discrimination which should be removed by raising the lower charge on intrastate shipments, where it is shown that such latter charge does not cover the actual cost of rendering the service.

Return — Railroad — Reicing detained cars — Operating costs — Ice transported by outside company — Ownership 50 per cent of capital stock.

A railroad company, in arriving at a reasonable charge for reicing detained refrigerator cars, is entitled to include in the costs the customary company freight rates for transporting the ice, only, and not the full commercial rates, where, although the ice is transported by another company, 50 per cent of the capital stock of the company is owned by the railroad company.

Return — Railroad — Reicing detained cars — Charge insufficient to pay operating costs.

A railroad company was allowed to increase its charge for reicing

refrigerator cars on intrastate shipments detained through fault of the shipper, from \$5 to \$10 a day, where it appeared that the former charge did not cover the actual cost of rendering the service.

[February 4, 1915.]

APPLICATION to increase charge for re-icing refrigerator cars; granted.

Appearances: Geo. D. Squires for applicant.

REPORT OF THE COMMISSION.

Devlin, Commissioner: This is an application of the Southern Pacific Company, under § 63 of the public utilities act, for permission to increase the detention charge for refrigeration of perishable freight originating at points Banning, California, and east thereof, main line and branches, also points on the Holton Interurban Railway Company, to all points in California, from \$5 to \$10 per day.

More properly speaking, it is an increased charge to be imposed on shippers to cover additional ice necessary to properly refrigerate shipments in cases where cars are furnished fully iced and either not completely loaded, or, if so loaded, are not forwarded on the last freight train of the day car is furnished for loading, the additional ice being necessary to preserve the shipment until the next train of the following day.

For example, a refrigerator car for loading cantaloupes is furnished fully iced at 10 a. m. The first melon train is due to leave the Imperial Valley at 5 p. m., and the last at 2 a. m. If the shipper either fails to complete loading, or if loading is completed and shipper fails to give the carrier shipping instructions, the car must remain at the loading point until at least 5 p. m. the following day. As the cantaloupe crop moves almost entirely during the months of June and July, and the weather is excessively hot in the Imperial Valley during this period, it is necessary, for the proper preservation of the cantaloupes, to replenish the ice supply.

The applicant urges that the charge of \$5 per day for replenishing the ice in bunkers does not cover the actual cost of the additional ice used, due to this car detention, and points to the fact that a charge of \$10 per day is made on interstate shipments, which has never been complained of as being excessive.

I can readily see where a charge of \$10 per day for car detention on interstate shipments, as against a charge of \$5 per day on intrastate shipments, will cause complications to arise; for if a car be originally consigned to an intrastate point, and a charge for \$5 per day collected for car detention, and this car is diverted *en route* to an interstate point,—which it was testified is frequently done,—the charge is automatically increased to \$10 per day.

Of course, the maintenance of two rates for the same service is a discrimination which can be as readily removed by lowering the higher of the two rates. The record shows that 3,391 cars of perishable freight moved from the Imperial Valley during the season of 1913, and that of this number 2,997 cars, or 88 per cent, moved to interstate points, and 394 cars, or 12 per cent, moved to intrastate points.

Of the cars detained and being subject to the detention charge, 750 were destined to interstate points and 176 to intrastate points, and if the discrimination were removed by reducing the interstate charge to \$5 per day the carriers would lose \$3,750 per annum, while the advance on intrastate shipments to \$10 per car amounts to an increase of but \$880 per annum to the shippers.

The applicant urges that, in view of the showing that the present charge of \$5 per day does not cover the cost of additional ice necessary to preserve the freight or keep the car in proper condition for immediate loading during detention, that the discrimination should be removed by raising the lower rate on intrastate shipments, and with this contention I am inclined to agree, assuming, of course, that the applicant's figures as to cost of ice are correct.

This leads me to a consideration of the cost of ice necessary to replenish the bunkers during the detention.

Ice for the refrigeration of perishable products of the Imperial Valley is supplied from different sources, and, according to an exhibit of applicant, the amount of ice necessary in this service and its cost is as follows:

Ice shipped from Colton (Pacific Fruit Express ice plant)—	
21,315.15 tons at \$2.10 per ton	\$44,761 82
Freight at \$3.00 per ton	63,945 45
Papering ice at 10 cents per ton	2,131 52

Ice shipped from Coachella (Coachella I. & R. Co.)—		
785.40 tons at \$4.25 per ton		3,337 95
Freight at \$1.15 per ton		903.21
Ice from El Centro (Colton Power Co.)—		
71.25 tons at \$4.25 per ton		302 81
Freight at \$.75 per ton		53 44
Ice from Los Angeles (Union-National Ice Co.)—		
2,958.90 tons at \$2.40 per ton		7,101 36
Freight at \$3.00 per ton		8,876 70
Papering ice at 10 cents per ton		295 89
		\$131,710 15
Total ice issued, 23,708.50 tons	\$5 56 per ton	
Labor, etc., handling ice, \$6,942.85	29 per ton	
Investment, \$4,104.85.		
Interest on investment, 6 per cent	\$246 29	
Depreciation, 6 per cent	246 29	
	\$492 58	02 per ton
		\$5 87

The only doubtful items in the above tabulation are those of freight charges from the ice shipping point to place where ice is placed in the bunkers of the refrigerator cars.

It will be noted that the commercial freight rate of \$3 per ton has been charged against ice shipped from Colton and Los Angeles, \$1.15 per ton from Coachella, and 75 cents per ton from El Centro.

The applicant contends that, inasmuch as the refrigeration of perishable products is performed on its lines by the Pacific Fruit Express Company, a separate institution, it must of necessity collect the regular commercial freight on the ice transported over its rails.

With this contention I cannot agree. The Southern Pacific Company employs an outside agency (the Pacific Fruit Express Company) to perform its refrigeration service, but at the same time owns 50 per cent of the stock of this company, the other 50 per cent being owned by the Union Pacific Railroad.

The Southern Pacific Company is obligated to furnish such instrumentalities as will transport safely traffic offered, and this duty includes furnishing refrigerator cars and the ice where the character of the commodity offered for shipment requires such cars and ice for its safe carriage. 2 Hutchinson, Carr. § 505; 4 Elliott, Railroads, § 1474, and cases therein cited; 4 R. C. L. 684.

If the Southern Pacific Company performed the refrigerator

service itself, instead of assigning that duty to an outside agency, it would hardly expect to charge the cost of transporting ice at commercial freight rates, but would rather arrive at a figure as near the actual cost as possible.

In estimating the freight rate on a given commodity from a particular territory, the carrier must consider not only the cost of carrying the freight over the road after loading, but also of getting the empty car to the point of loading. Refrigerator cars must be hauled empty into the Imperial Valley to load cantaloupes; live-stock cars are hauled empty into a stock-shipping territory; flat and box cars into a lumber-producing region; for the reason that the ordinary traffic to such territory is not sufficient to provide loading for this equipment, and it must move empty to handle outgoing tonnage.

Would the carrier contend that in arriving at a reasonable freight rate on the outbound movement of cantaloupes, live stock or lumber, as the case might be, it would be entitled to the commercial rate of freight for transporting the empty car to the loading point? I think not, and as the ice to fill the bunkers is just as essential as the refrigerator car itself, I am of the opinion the rate on company freight should be applied on this movement of ice, and that, instead of \$3 per ton from Colton, a rate of approximately 85 cents per ton should be charged, based on the established and customary rate for company material of $\frac{1}{2}$ cent per ton per mile.

I am not in accord with the contention of applicant that the carrier is required to charge the commercial freight rate on ice transported for an agent assigned a duty for carrying out part of the obligations of the carrier to the public; and a contract to haul the ice at less than commercial freight rates in such a case as this would, in my judgment, be valid, and indeed proper.

While it is unnecessary, for the purposes of this case, to even consider the cost of transporting ice, I have deemed it advisable to discuss it at length, so that the applicant would not consider that without further evidence we accept the statement that commercial freight rates should be charged in such cases as these.

The record shows that of the cars reiced on account of detention beyond the departure of the last melon train, approximately 8,500 pounds of ice are necessary to properly replenish the tanks

for one day's detention. If we only allow company freight rates for the transportation of ice, which would reduce the cost from \$5.87 per ton to about \$4 per ton, at this figure the cost would be about \$17 per day.

This charge of \$17 per day should be reduced by deducting the value of the ice which the refrigerator company would have to place in the bunkers to fill the same in event car moved out without being detained.

No accurate estimate could be furnished at the hearing as to what amount of ice would be necessary to replenish bunkers after loading and before car was taken out by train in event car was not detained, but an investigation of the records of applicant indicates that an average of about 3,000 pounds of ice is required when car is not detained, which would have to be furnished without cost, and the value of this ice should be deducted as above mentioned.

It will thus be apparent that the proposed charge is not unreasonable, and the application should be granted.

Although notice of hearing was sent to interested shippers and others, no protestants appeared at the hearing. A representative of the shippers was present, and stated that the refrigeration service was very acceptable to shippers, but that he questioned the justice of some of the refrigeration rates.

The question of the refrigeration charges from one point in California to another was not involved in this proceeding, and, of course, the only remedy the shippers have, if any of the refrigeration rates are deemed excessive, is to file a complaint specifically attacking the refrigeration charges complained of.

From a careful consideration of all the facts and evidence in this case, I believe the application should be granted, and submit the following order:

ORDER.

The Southern Pacific Company having filed an application for permission to increase rate for detention of refrigerator cars from \$5 to \$10 per day on perishable freight from points on its lines Banning and east thereof, main and branch lines, including the Holton Interurban Railway Company, to all points in California,
P.U.R.'15A.—55.

and a regular hearing having been held, and basing its order on the opinion which precedes this order,—

It is hereby ordered that said application be and the same is hereby granted.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

TEXAS RAILROAD COMMISSION.

BILLS OF LADING. Provisions Thereof Requiring the Filing of Notice of Claims within 120 Days.

[Circular No. 4728; Hearing No. 1617.]

Bills of lading — Claims for damages — Time limit.

The time specified in bills of lading within which written claims for damages in connection with the transportation of freight between points in Texas must be presented is fixed at not less than six months after such claims shall have accrued.

[February 13, 1915.]

GENERAL order.

By the **Commission**: Whereas, in the above-numbered cause, heard on Tuesday, February 9, 1915, in pursuance of notice duly given therein, it appearing to the Railroad Commission of Texas that there is embodied in the forms of bills of lading, used by common carriers operating in this state and in connection with the transportation of shipments of freight transported between points in this state, the following clause:

“It is mutually agreed that as a condition precedent to the right to recover for any damages, or claim, or injury to a partial or total loss of, or the depreciation or declining of the market value of, the shipment during the transportation thereof, or prior to or after the termination of such transportation, party claiming such right of recovery shall give notice in writing of such claim, stating the nature and character thereof to some officer of the carrier, or to the nearest or the most convenient local agent of the carrier, or if delivered at a point beyond the car-

rier's line of road, the nearest or most convenient station agent of the carrier making such delivery; such notice cannot and shall not be waived, except in writing by the general freight agent or auditor of the carrier, nor shall any such claim for damages be recoverable unless such written claim therefor shall be presented to the carrier within one hundred and twenty days after the same may have accrued; the filing of a suit shall not be a compliance with this requirement of notice."

And the Commission, after due and careful consideration of the matter, being of opinion that the time limit of "one hundred and twenty days," as set out therein and required by the terms of said clause, is unreasonable to the public;

It is now therefore hereby ordered by the Railroad Commission of Texas that, in all cases where a clause, the same as or similar to that heretofore set out, is, for the same or similar purposes, inserted and embodied in bill of lading forms used by common carriers operating in this state in connection with the transportation of freight between points in this state, the time limit therein specified within which "such written claim" shall be presented to the carrier shall not be less than six months after such claim may have accrued.

This order shall take effect March 8, 1915, and said cause No. 1617 is held in abeyance for such other and further orders therein as may be deemed advisable.

Allison Mayfield, Chairman; Earle B. Mayfield, Commissioner.

CALIFORNIA RAILROAD COMMISSION.

HUGHSON TELEPHONE COMPANY

v.

PACIFIC TELEPHONE & TELEGRAPH COMPANY.

[Decision No. 2145; Case No. 733.]

Intercompany relations — Territorial agreement — Prior consumers' contracts.

Consumers receiving exchange service under contract with one telephone company will not be required to accept in lieu thereof less

desirable exchange service with another company on the grounds that the former company has assigned the territory in which their telephones are located and the latter company has agreed to carry out all unexpired contracts within such territory, where it appears that their contracts were entered into prior to the Commission's jurisdiction and prior to the territorial agreement in question, and where it appears that the latter telephone company cannot, without deviating from its present rates, fulfil its agreement so far as service to such consumers is concerned.

Service — Telephone extensions — What constitutes.

The mere connection of a telephone within a certain territory is not an extension of the lines of the company within such territory, where the line had been previously constructed and connected for the use of a former patron, to whose property interests the present user has succeeded, and for whose use the new connection was made.

Service — Telephone — Rights of transferee — Territorial agreement.

The present user of a telephone connection, who has succeeded to the property rights of a former patron, cannot be lawfully denied the right to service to which such former patron was entitled, on the theory that the present connection was a new one in violation of a territorial-partition contract by which the company has agreed not to continue service in the territory in which the connection was made.

Interpolate relations — Territorial agreement — Nonenforceability.

A telephone company will not be compelled to discontinue its connections to certain consumers on the ground that it is violating a territorial agreement made with another telephone company by serving such consumers, where it appears that the latter company cannot, without deviating from its present rates, fulfil its own part of such agreement in regard to service to such consumers, and where it does not appear that any violation of the utilities act with reference to construction of new lines or extensions of existing lines has occurred.

[February 8, 1915.]

COMPLAINT to enforce territorial agreement between telephone companies; dismissed.

Appearances: F. C. Nickle for complainant; J. W. Gilkyson for defendant.

REPORT OF THE COMMISSION.

Gordon, Commissioner: This is a complaint by the Hughson Telephone Company, which owns and operates a telephone exchange serving the town of Hughson and contiguous territory in Stanislaus county, alleging that the Pacific Telephone & Telegraph Company is maintaining telephones in its territory in violation of the terms of an agreement which was voluntarily entered into between the two companies on November 8, 1912,

and asking the Commission to require the Pacific Telephone & Telegraph Company to discontinue its connections in this territory, and to require the patrons using these telephones to accept such telephone service as they may require through the complainant's exchange.

The agreement referred to is of the form commonly in use between the Pacific Telephone & Telegraph Company and its connecting companies, and is designed to provide for an interchange of service and the terms and conditions under which service shall be interchanged by the contracting parties. This agreement in this case defines certain specific territory which both parties agree shall, under certain conditions, be served exclusively by the complainant's lines, and provides that this complainant shall assume and carry out all of the Pacific Company's unexpired subscribers' contracts within that territory.

The complaint was heard in Hughson on January 15, 1915. Testimony was introduced to the effect that at the time this agreement was entered into and before this Commission acquired jurisdiction in such matters, the Pacific Company was serving twenty-three or twenty-four patrons in this territory by lines connecting with its Modesto exchange, fifteen of this number still being connected when this complaint was filed, and that since November 8, 1912, one additional telephone was connected within this territory for one Samuel Styles. The defendant claims, however, that when this telephone was connected it was represented to the company that the patron was taking over the service of a former patron, and that it was not aware that a violation of the agreement had occurred. The defendant also testified, as indicated by its formal answer to this complaint, that if the patrons themselves are willing or if it may be released from all liability as regards the responsibility for continuing their present service, it is willing to discontinue the Modesto connection and allow the complainant to serve them through the Hughson exchange.

The contracts which these subscribers now hold provide for unlimited exchange switching with all other subscribers connected with the Modesto exchange at specified yearly rates, no other rate being involved for this service. The complainant, however, has a toll charge in effect for switching over its line

between Hughson and Modesto. It is plain, therefore, that if these patrons having contracts with the Pacific Company calling for unlimited switching with Modesto without the payment of additional toll charges were required to relinquish their connection with Modesto for service through Hughson, an added charge for all calls to Modesto would result as long as the complainant's toll charge between these exchanges continues in effect. It follows, therefore, that the complainant cannot possibly, without deviating from his present rates, fulfil the obligation which he has assumed in agreeing to carry out all of the Pacific Company's unexpired subscribers' contracts within this territory. The testimony shows, further, that although efforts have been attempted to induce these people to agree to the change, the complainant has not yet succeeded in persuading them to do so.

So far as these particular fifteen patrons are concerned, since they were receiving Modesto service prior to the Commission's jurisdiction and prior to the time of entering into the contract, and since the complainant cannot possibly fulfil the terms of its contract, it is my opinion that they cannot reasonably be required to surrender their connection with defendant's Modesto exchange in exchange for a direct connection with the complainant's Hughson exchange, involving an added charge for Modesto service.

With reference to the telephone in use by Samuel Styles, although this telephone was connected at its present location since the contract was entered into and since March 23, 1912, the line with which it is connected was constructed and was connected with the Pacific Company's Modesto exchange prior to either of these dates, and according to the evidence was transferred by a former patron for whom it was also connected prior to those dates to the present user, who has succeeded to the former patron's property interests in this locality. It does not appear, therefore, that the connection of this telephone can be regarded as a further extension of the defendant's lines into this territory, or that the present user can be lawfully denied the right to Modesto service over this line.

It will be noted that a violation of the contract which has been entered into by this complainant with the defendant is made the basis of this complaint. This Commission has heretofore withheld its approval of contracts of this nature, and, as has been

already pointed out, the complainant is unable to fulfil the terms of its contract so far as service for these patrons is concerned. Nor does it appear that any violation of the provisions of § 50 (a) of the public utilities act with reference to the construction of new lines or extensions of existing lines has occurred. I am accordingly of the opinion that this complaint should be dismissed, and shall so recommend.

ORDER.

The Hughson Telephone Company having made complaint to this Commission, alleging that the Pacific Telephone & Telegraph Company maintains certain telephones within territory purported to be served by the complainant in violation of a certain agreement heretofore voluntarily entered into between said complainant and the said the Pacific Telephone & Telegraph Company, and asking that defendant, the Pacific Telephone & Telegraph Company, be required to refuse further service within the said territory, and that each patron of the said defendant located within the said territory and now receiving service over the defendant's lines be required to transfer his connection to the complainant's exchange at Hughson, and a hearing having been held and the Commission having found as a fact:

(1) That there are as of date of this complaint sixteen telephones located within territory which was assigned by agreement to the Hughson Telephone Company being served by the Pacific Telephone & Telegraph Company by means of lines connecting directly with its exchange in the city of Modesto.

(2) That of these sixteen telephones fifteen were connected with the Pacific Telephone & Telegraph Company's Modesto exchange prior to March 23, 1912, and prior to the date upon which the agreement hereinabove referred to was entered into by the complainant and the defendant herein.

(3) That the remaining telephone now in use by Samuel Styles, although connected subsequent to March 23, 1912, was not connected in violation of the provisions of § 50(a) of the public utilities act.

(4) That the complainant, the Hughson Telephone Company, has entered into an agreement with the Pacific Telephone & Telegraph Company, the terms of which so far as said terms affect

the service of the sixteen telephones mentioned in paragraph 1 above cannot be fulfilled by the complainant under complainant's rates as at present in effect.

And basing its opinion upon the foregoing findings of fact,—

It is hereby ordered that the complaint herein be, and it hereby is, dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 8th day of February, 1915.

ILLINOIS PUBLIC SERVICE COMMISSION.

IN RE NATIONAL TELEPHONE & ELECTRIC COMPANY.

[No. 3274.]

Security issues — Purposes for which authorized — Refunding obligations incurred for new construction.

A telephone company was authorized to execute a first mortgage to secure \$100,000 par value of bonds, and to issue at that time \$88,000 par value of said bonds, \$75,000 of the proceeds therefrom to be used to refund obligations incurred for construction, extension, or improvement of or addition to its facilities.

Security issues — Purposes for which authorized — New construction.

A telephone company was authorized to issue \$88,000 par value of bonds, \$12,500 of the proceeds therefrom to be used for construction, extension, or improvement of or addition to its facilities.

Security issues — Purposes for which authorized — Discount or deficiency upon sale.

A telephone company was authorized to issue \$88,000 par value of bonds, \$650 of the proceeds therefrom to be used to make up discount or deficiency, if any, so that the sale of said bonds shall net not less than 95 per cent of par.

Security issues — Sale price.

A telephone company was authorized to issue \$88,000 par value of first-mortgage loan gold bonds bearing interest at 6 per cent payable semiannually, maturing January 1, 1935, and redeemable at any interest date after January 1, 1920, at par plus accrued interest, said bonds to be sold at not less than 95 per cent of par plus accrued interest.

Security issues — Amortization of discounts and expenses of sale.

A telephone company was ordered to amortize by payment of equal instalments out of income all discounts, commissions, and expenses in

connection with the approval, issuance, and sale of an authorized issue of bonds, before the maturity thereof.

[February 4, 1915.]

APPLICATION for authority to issue securities: granted.

By the **Commission**: Section 1. Application having been made to the State Public Utilities Commission of Illinois by the National Telephone & Electric Company under provisions of the public utilities law for the consent of the Commission to the execution and issuance by said company of a mortgage or deed of trust to George B. Marvel, as trustee, and a hearing having been duly held upon said application before the Commission; and it appearing to the Commission that the owners of the capital stock of said National Telephone & Electric Company, in an amount equal to that required by the statute have consented to the issuance of said mortgage; and application having been made to the State Public Utilities Commission of Illinois by the National Telephone & Electric Company under the provisions of the public utilities law of Illinois for the consent of the Commission to the issuance by said company of its first-mortgage loan 6 per cent gold bonds to the amount of \$100,000 face value, said bonds to be payable on the 1st day of January, 1935, and to bear interest at 6 per cent per annum, payable semiannually, and to be secured by a deed of trust upon all the property of the company; and a hearing having been duly held upon said application before the Commission; and it being now the opinion of the Commission:

(1) That the money to be procured by the issue of said first-mortgage loan 6 per cent gold bonds of the said National Telephone & Electric Company to the amount of \$88,000 face value, as hereinafter authorized, payable at a period of more than twelve months after the date hereof, is necessary and reasonably required by said company for the construction, extension, or improvements of or addition to its facilities, and for the discharge or lawful refunding of its obligations, and particularly for the purposes which are hereinafter stated in this order; and

(2) That said purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income, except as to the

amount of \$650, or so much thereof as may be necessary to pay expenses of sale and make up discount.

Section 2. It is ordered that the State Public Utilities Commission of Illinois does hereby consent to the issuance and execution by said National Telephone & Electric Company unto said George B. Marvel as trustee, of a deed of trust or first mortgage, said deed of trust or first mortgage to be dated as of the 1st day of January, 1915, to secure an issue of \$100,000 of bonds, to be dated as of the 1st day of January, 1915, of the said National Telephone & Electric Company, redeemable at the par value thereof and accrued interest, and the said bonds to bear interest at 6 per cent per annum, payable semiannually upon the terms and conditions in said deed of trust or first mortgage set forth and contained. The form of such mortgage submitted by said National Telephone & Electric Company as "exhibit B-4-1" of its petition to the Commission is hereby approved and ordered filed and properly identified by re-reference thereon to the resolution under authority of which this order is issued. Said company, however, shall have no right or authority to issue any bonds pursuant to the terms of said mortgage except as hereby authorized by the Commission.

Section 3. It is ordered that the State Public Utilities Commission of Illinois does hereby authorize the issue by said National Telephone & Electric Company, of \$88,000 face value of the principal of the first-mortgage loan 6 per cent gold bonds of said company, maturing the 1st day of January, 1935, redeemable at any interest paying date after the 1st day of January, 1920, at par or face value thereof besides accrued interest, and to bear interest at 6 per cent per annum, payable semiannually under and in pursuance of the terms of the deed of trust or first mortgage hereinbefore approved, to be made and executed by the said National Telephone & Electric Company to George B. Marvel, as trustee.

Section 4. It is ordered that said issue of first-mortgage loan 6 per cent gold bonds to the amount of \$88,000 is authorized upon the conditions following, and not otherwise, to wit:

First. That the said National Telephone & Electric Company shall sell the said first-mortgage loan 6 per cent gold bonds hereby authorized to be issued so as to net the said company not less

than 95 per cent of the par value of the principal thereof, besides interest accrued thereon, and that the proceeds thereof shall be applied only to the following purposes, to wit:

(1) For discharge or lawful refunding of obligations incurred for acquisition of property and for construction, extension, or improvement of or addition to its facilities	\$75,000.00
(2) For construction, extension, or improvement of or addition to its facilities, as set forth in detail in "exhibit D" of the petition filed herein	\$12,500.00
(3) For expenses of sale of bonds herein authorized and to make up the discount or deficiency, if any, in the amount realized from the sale so as to net not less than 95 per cent of the par value of the bonds sold for the purposes specified in subdivision 2 of paragraph 1st of § (4), and to be applied <i>pro rata</i> for the purposes thereon stated, not exceeding the sum of ...	650.00
	<u>\$13,000.00</u>
Total	\$88,000.00

Second. That all discounts, commissions, and expenses in connection with the approval, issuance, and sale of the said first-mortgage loan 6 per cent gold bonds authorized to be issued under this order shall be amortized out of the income of the company before the maturity of said bonds, by the payment of equal instalments so long as may be necessary for that purpose.

Third. That said company shall keep separate, true, and accurate accounts showing the receipt and application in detail of the proceeds of sale or disposal of the first-mortgage loan 6 per cent gold bonds hereby authorized to be issued, and at the end of every month from date hereof the company shall make verified report to the Commission, stating the sale or sales of said first-mortgage loan 6 per cent gold bonds during the previous month, the terms and conditions of sale, the money realized therefrom, and the use and application of such moneys; and said accounts, vouchers, and records shall be open to audit, and may be audited from time to time by accountants and examiners designated for such purpose by the Commission; that said company shall cause the present mortgage or deed of trust executed and issued by it to Charles H. Turner, as trustee, to be released and the release thereof to be recorded in the several counties in which said mortgage is recorded, and shall record the said deed of trust or first mortgage hereinbefore authorized to be executed and issued by said National Telephone & Electric Company to George

B. Marvel, as trustee, in the several counties in which the said company has or shall have property, and the said company shall immediately, upon the recording of the release of the present deed of trust or mortgage upon its property, and recording of the deed of trust or mortgage hereinbefore authorized, make verified report to the Commission concerning same; the said company shall cause the bonds hereinbefore authorized to be refunded and in the aggregate amount of \$75,000 par value to be canceled and cremated by the trustee, and shall obtain a certificate from the trustee of said cancellation and cremation, file said certificate with the Commission; that said company shall, from the date of this order, open up and start such books and forms of accounts as conform to the Commission's orders and requirements, said books and accounts to set forth a plant and equipment account, both tangible and intangible, equal to the present value of the petitioner's plant and equipment as shown by the inventory and appraisalment thereof made as of August 1, 1914, and more particularly described as petitioner's "exhibit 1."

Fourth. That the authority hereby given to issue such first-mortgage loan 6 per cent gold bonds shall apply only to the first-mortgage loan 6 per cent gold bonds issued by the said company on or before the 1st day of May, 1915.

Fifth. That said company shall, before the delivery of such first-mortgage loan 6 per cent gold bonds hereby authorized to be issued, cause to be stamped, printed, or engraved on the face of each of aforementioned first-mortgage loan 6 per cent gold bonds for their proper and easy identification the following:

"State Public Utilities Commission of Illinois.

Authorization Number Ninety-two.

February, 1915."

Section 5. It is ordered that this order take effect on the 4th day of February, 1915, and except as provided in the 4th paragraph of § 4, limiting the duration of the authority to issue such first-mortgage loan 6 per cent gold bonds herein granted, continue in force until otherwise ordered by this Commission, and that within ten days after service upon it of a copy of this order said company notify the Commission whether the terms of this order are accepted and will be obeyed.

Section 6. It is ordered that said National Telephone & Elec-

tric Company be, and is hereby, charged an amount equal to 10 cents for every hundred dollars of security, authorized by this order, and the same shall be paid into the state treasury before any of such securities shall be issued.

Section 7. This order shall be signed by the acting secretary of this Commission, and authenticated by its seal.

By order of the Commission this 4th day of February, 1915.
Dated at Springfield, Illinois.

Note.—In Re South Beloit Water, Gas & Electric Company, No. 3451, February 11, 1915, the company was authorized to make and deliver to the Beloit Water, Gas, & Electric Company its 6 per cent note for \$11,500 due three months after demand, but not later than March 1, 1937, and to issue and deliver to the latter company a mortgage, securing the payment thereof, covering all of the property now owned or hereafter acquired by the mortgagor (including its franchises and privileges), and containing provisions conforming to the terms of a trust deed given by the Beloit Water, Gas, & Electric Company to the Union Savings Bank & Trust Company, as trustee, of date March 1, 1912, in order that the said mortgage and said note might be transferred and assigned by the last-mentioned company to the said trustee, as collateral security for any bonds which may be lawfully issued pursuant to the terms of said trust deed and to the certificate of the Railroad Commission of Wisconsin. The South Beloit Water, Gas, & Electric Company was also authorized to issue and deliver to said Beloit Water, Gas, & Electric Company, its 6 per cent note for the sum of \$4,826.66, maturing three months after demand, but not later than March 1, 1937, both notes to be payable to the Beloit Water, Gas, & Electric Company or to its order.

The purposes of the issue as provided for the order "is to discharge and refund the notes and open account to January 1, 1915, now owned and held by said Beloit Water, Gas, & Electric Company against said South Beloit Water, Gas, & Electric Company, and given and incurred by the latter company for moneys advanced and loaned by said Beloit Water, Gas, & Electric Company to said South Beloit Water, Gas, & Electric Company, and which were used and applied by the latter to the making of extensions, betterments, and improvements, of a permanent nature, to and about its distribution systems, and by said South Beloit Company reasonably chargeable to capital account: and upon the making, issuance, and delivery of the notes and mortgage aforesaid, the said notes, and account which the same are thus to discharge and refund, and the principal of which aggregates the aggregate principal of the notes hereby authorized, shall be surrendered and canceled."

NEBRASKA STATE RAILWAY COMMISSION.

IN RE NEBRASKA TELEPHONE COMPANY.

[No. 2334.]

Reports — Destruction of company records.

A telephone company was granted authority to destroy certain of its records and memoranda, it appearing that the records and memoranda in question were not of permanent value.

[February 23, 1915.]

APPLICATION for authority to destroy certain records; granted.

By the **Commission**: Whereas, Nebraska Telephone Company has made application to the Nebraska State Railway Commission for authority to destroy certain of its records and memoranda, the form number and description of the records referred to being as follows:

Form Number	Description	Period	Transcribed to Other Records
G-13	Reports from Managers and Agents showing debits and credits to revenue.	1-1-12 to 2-29-12	Yes.
S. N. 60	Requisitions (carbon copies) for supplies.	1-1-12 to 12-31-12	Original held as permanent record.
None	Reports of examinations and audits by Traveling Auditors.	1-1-12 to 2-29-12 inc.	To memo cards as to date and conditions.
None	Correspondence by Traveling Auditors relating to their examinations and audits (audits destroyed. See Railway Com. Application No. 2303).	5-1905 to 12-31-11	To memo cards as to date and conditions.

And it appearing to the Commission, upon due investigation and consideration, that the application is reasonable and warranted by existing conditions, and that the records which it is proposed to destroy are not of permanent value;

It is ordered by the Nebraska State Railway Commission that the desired authority be, and the same is, hereby granted.

Made and entered at Lincoln, Nebraska, this 23d day of February, 1915.

Nebraska State Railway Commission, Henry T. Clarke, Jr., Chairman.

LOUISIANA RAILROAD COMMISSION.

NEW ORLEANS JOINT TRAFFIC BUREAU

v.

TEXAS & PACIFIC RAILWAY COMPANY.

[No. 2245; Order No. 1873.]

Reparation — Railroads — Delay in delivery of freight.

A railroad company which has failed to deliver shipments of freight promptly, as required by the rules of the Commission, is liable for the car rental charges against the shipper under the terms of a contract between a car company and the shipper, although the railroad company is not a party to such rental contract.

[February 23, 1915.]

PROCEEDING to obtain reparation for damages caused by unlawful delay in the delivery of freight; order for reparation granted.

By the **Commission**: On October 19, 1914, the New Orleans Joint Traffic Bureau filed petition with this Commission, requesting that an order be issued requiring the Texas & Pacific Railway Company to refund the New Orleans Coffee Company, Limited, rental on two tank cars, which amount of rental the New Orleans Coffee Company was forced to pay, due to alleged unreasonable delay on the part of defendant in making delivery.

The case was called as per assignment on December 15, 1914, and, after due hearing, taken under advisement.

The record shows that the Texas & Pacific Railway Company during November, 1913, accepted at St. Louis Plantation, Louisiana, for transportation to New Orleans, and consigned to the New Orleans Coffee Company, Limited, two tank cars loaded with molasses. These two cars reached the defendant's Gouldsboro terminal during the same month, but were not delivered to the consignee until an unreasonable length of time after. The plaintiff alleges that on account of the unreasonable delay, the consignee, the New Orleans Coffee Company, Limited, was required to pay to Raymond B. Scudder, the lessor of above-mentioned tank cars, rental of \$19, at a rate of \$1 per car per day, for the period said cars were held in defendant's Gouldsboro terminal.

The defendant company, in its answer, alleges that the New Orleans Coffee Company, Limited, in 1913, entered into a contract with Raymond B. Scudder for the lease of certain tank cars at rental of \$1 per day. The Texas & Pacific Railway Company was not a party to the contract, and under the usual method of settlement between railroads and owners of private cars, which includes tank cars, the Texas & Pacific Railway Company did pay to the owner, Raymond B. Scudder, three fourths of a cent per mile for the mileage these tanks made on the rails of the Texas & Pacific, whether loaded or empty. This arrangement is the one that is agreed upon by all railroads in the United States and private car owners. The defendant company therefore contends that it has fulfilled its obligation as far as the use of the car is concerned, to the owner, and any arrangement he may have with the lessee of his cars, or any claim for detention as far as the equipment is concerned, is one that is solely between the lessor and the lessee; and that the railroad company has no interest or obligation whatsoever to either the lessor or lessee other than the usual practice in settlement for the use of private cars above set forth.

The Commission is not concerned with the contract existing between the shipper and the car owner for the use of the cars. The question which is presented in this case is: Has the complainant, the New Orleans Coffee Company, Limited, suffered damage by the failure of the Texas & Pacific Railway Company to deliver the two shipments in question without unreasonable delay, as required by the rules and regulations of this Commission?

Rule No. 65 of the Railroad Commission provides, among other things, that the carrier receiving the freight shall be held responsible for the prompt and safe delivery of the same to its point of destination within a reasonable time required by its transportation; such reasonable time shall be determined after due investigation by the Commission.

Rule No. 71 provides: "That no carrier, for any cause, subject any articles of freight to unreasonable delay in receiving, delivering, or forwarding the same to its destination."

It is plain that the consignee in this case was subjected to a damage by having to pay the sum of \$19 to the owner of the

private cars, by reason of the violation of the rules of this Commission, above quoted, and is entitled, therefore, to an award of damages for violation of the said rules.

The premises considered, it is ordered that the Texas & Pacific Railway Company, for having caused the New Orleans Coffee Company, Limited, damages to the extent of \$19 by subjecting 2 shipments of molasses in R. B. S. tank cars Nos. 12 and 23, billed from Plaquemine, Louisiana, to New Orleans, Louisiana, on waybill No. 254, of November 13, 1913, and waybill No. 463, of November 22, 1913, to unreasonable delay, be, and the said Texas & Pacific Railway Company is hereby commanded and required to pay to the New Orleans Coffee Company, Limited, the sum of \$19, this being the amount to which it is entitled, on or before the 1st day of April, 1915.

By order of the Commission, Baton Rouge, Louisiana, February 23, 1915: Shelby Taylor, Chairman; B. A. Bridges, John T. Michel, Commissioners.

NEBRASKA STATE RAILWAY COMMISSION.

IN RE CHICAGO, ST. PAUL, MINNEAPOLIS, & OMAHA RAILWAY COMPANY.

[No. 2341.]

Rates — Railroad — Regulations relating to disposition and storage of explosives.

A railroad company was authorized to substitute for its existing tariff covering the charges for storage of explosives, a new tariff consisting of extracts taken from the regulations of the Interstate Commerce Commission, which provides that in case explosives or articles are not removed by the consignee from the carrier's premises within forty-eight hours after notice of arrival, they must be disposed of by return to the shipper, or by storage at the expense of the owner at certain prescribed rates, or by sale, or, when necessary for safety, by destruction under supervision of a competent person.

[February 25, 1915.]

APPLICATION for authority to amend rules relating to disposition of and storage of explosives; granted.

P.U.R.'15A.—56.

By the **Commission**: Whereas, the Chicago, St. Paul, Minneapolis, & Omaha Railway Company has made application to the Nebraska State Railway Commission for authority to amend its rule 6 of tariff No. 1247-F, supplement No. 5, which covers the charges for storage of explosives and other dangerous articles, so as to read as follows:—

“Rule 6. Charges for Storage on Explosives and Other Dangerous Articles. (Extracts from Regulations Prescribed by the Interstate Commerce Commission.)

“1. Paragraph 1433. . . . ‘Consignees must remove such shipments from the carrier’s property within forty-eight hours after notice of arrival at destination, Sundays and holidays not included.’

“2. Paragraph 1643 (a). . . . ‘If a shipment of explosives is not removed within forty-eight hours after notice of arrival at destination, it must be disposed of by return to the shipper, or by storage at the expense of the owner, or by sale, or, when necessary to safety, by destruction under supervision of a competent person.’

“3. Paragraph 1714. . . . ‘Consignees must remove such shipments from the carrier’s property within forty-eight hours after notice of arrival at destination, Sundays and holidays not included.’

“Storage will be charged at the following rates per day of twenty-four hours or fraction thereof, on explosives or other dangerous articles held in or on railroad premises in excess of free time allowed.

“Section A. On less than carload shipments of the more dangerous explosives, *i. e.*, low explosives, black powder, high explosives, wet fulminate of mercury, blasting caps, electric blasting caps, ammunition for cannon with explosive projectiles, explosive projectiles, explosive torpedoes, and detonating fuses, unloaded in or on railroad premises, 25 cents per 100 pounds, with a minimum charge of 25 cents.

“On carload shipments, \$5 per day in addition to the regular demurrage charges.

“Section B. On less than carload shipments of the less dangerous and relatively safe explosives, *i. e.*, ammunition for cannon with empty projectiles, ammunition for cannon with sand loaded

projectiles, ammunition for cannon with solid projectiles, ammunition for cannon without projectiles, smokeless powder for cannon, smokeless powder for small arms, common fireworks, special fireworks, small arms ammunition, cannon primers, small arms primers, empty cartridge bags, black powder igniters, empty cartridge shells, primed, combination primers, percussion caps, percussion fuses, time, tracer, or combination fuses, safety fuse, cordeau detonnant with safety squibs, or less than carload shipments of dangerous articles, or other explosives, requiring red, yellow, green, or white I. C. C. labels, unloaded in or on railroad premises, 10 cents per 100 pounds, with a minimum charge of 10 cents.

"On carload shipments \$2 per day in addition to the regular demurrage charges.

"Section C. When shipments of the more dangerous explosives (see § A) are not removed from the railway premises by the consignee within the legal limit (forty-eight hours [two days] after the first 7 A. M. following notice of arrival) the most practicable of the steps authorized by paragraphs 1643 (a), as quoted above, must be taken to secure this removal.

"When available, powder magazines not on railroad property should be utilized for storage."

And it appearing to the Commission, upon due investigation and consideration, that the application is reasonable and warranted by existing conditions, it is ordered by the Nebraska State Railway Commission that the desired authority be and the same is hereby granted, the rule as amended to become effective from and after publication and filing with the Commission of a lawful tariff providing therefor but not later than 30 days from date of order.

Made and entered at Lincoln, Nebraska, this 25th day of February, 1915.

Nebraska State Railway Commission, Henry T. Clarke, Jr.,
Chairman.

NEBRASKA STATE RAILWAY COMMISSION.

IN RE WESTERN NEBRASKA TELEPHONE COMPANY OF
HARRISBURG.

[No. 2323.]

*Return — Revenue insufficient for operating and maintenance costs —
Increased rates authorized.*

A telephone company was authorized to increase its business phone rate from \$1 to \$2 per month, and its residence and farm-line rates from \$1 to \$1.50 per month, where it appeared that revenues under its existing rates were insufficient to pay operation and maintenance expenses, let alone any rate on investments.

[February 23, 1915.]

APPLICATION for authority to increase rates; granted.

By the **Commission**: Whereas the Western Nebraska Telephone Company of Harrisburg has made application to the Nebraska State Railway Commission for authority to increase its business phone rate from \$1 to \$2 per month, and its residence and farm-line rates from \$1 to \$1.50 per month;

And it appearing to the Commission, upon due investigation and consideration, that the application is reasonable, warranted by existing conditions, and that the revenues of the applicant under present rates are not sufficient to pay operation and maintenance expenses, let alone any rate on investments;

It is ordered by the Nebraska State Railway Commission that the desired authority be, and the same is, hereby granted, the rates as above authorized to become effective from and after April 1, 1915.

Made and entered at Lincoln, Nebraska, this 23d day of February, 1915.

Nebraska State Railway Commission, Henry T. Clarke, Jr.,
Chairman.

OKLAHOMA CORPORATION COMMISSION.

OKLAHOMA MILLERS ASSOCIATION

v.

ATCHISON, TOPEKA, & SANTA FE RAILWAY COMPANY
ET AL.

[Cause No. 2220; Order No. 904; Amending Order No. 505.]

Railroad — Rates — Discrimination — Invalid defense.

The fact that a railroad company which maintains an interstate rate on poultry and stock food on the corn basis, and intrastate rates on the same products on the wheat basis, intends to advance the interstate rates some time in the near future, and to establish the intrastate rate on the same basis, is no defense to a proceeding for the adjustment of present rates on such products, on the ground that they are unreasonable and discriminatory.

Railroad — Rates — Transit privileges — Discrimination.

Intrastate shippers are entitled to transit privileges in the marketing of poultry and stock food where such privileges are accorded to interstate shippers.

Railroad — Rates — Poultry and stock foods — Percentage of foreign ingredients.

There is no objection to an increase in the percentage of foreign ingredients in poultry and stock foods, where shippers claim no transit privileges upon such ingredients and the increase results in a greater revenue to the carriers.

Railroad — Rates — Poultry and stock food — Discrimination.

The intrastate classification of poultry and stock food for rate purposes was made to conform to the interstate classification of the same products, by changing from wheat rate basis to the corn rate basis, where it appeared that under the existing discriminatory rates Oklahoma producers were unable to compete with interstate business.

Railroad — Rates — Transit privileges.

Intrastate transit privileges were established for poultry and stock food similar to the regulations applying to interstate, but with an increase from 20 to 33½ in the percentage of ingredients other than grain, seeds, alfalfa hay, and products thereof which shall be permitted in the mixture upon which transit privileges were to apply.

[February 7, 1915.]

PROCEEDING for adjustment of rates on poultry and stock food; order adjusting intrastate rates and fixing transit privileges.

OPINION AND ORDER.

By the **Commission**: This proceeding results from a complaint filed by the Oklahoma Millers Association, a voluntary as-

sociation of millers and grain dealers, alleging that the rates on poultry and stock food between points in the state of Oklahoma are unjust and unreasonable of themselves, and discriminatory against manufacturers and dealers in these commodities, located at points within the state, in favor of similar dealers in surrounding states.

The present rates in Oklahoma are class B, this Commission having prescribed no commodity rates other than naming in the list of articles subject to wheat rates under order No. 303, "chicken feed made of grain and seeds only."

Oklahoma's production of live stock and poultry has rapidly increased within the past few years, creating an increasing demand for stock and poultry food. Mixtures of grain and grain products and other ingredients, of which black strap molasses is one of the principal, have been put upon the market, and there is considerable demand for same at points in Oklahoma. Amongst other ingredients used with the grain in the manufacture of poultry food are ground bone, mica grit, crushed oyster shell, beef scraps, blood meal, tankage, and other by-products of packing houses.

The record in this case shows that the average value of stock food is less than $1\frac{1}{2}$ cents per pound, and of poultry food less than 2 cents per pound. This value is less than that of wheat, and approximately the same as corn.

On interstate traffic, all of the principal carriers operating into and out of Oklahoma have maintained for at least two years the corn basis of rates on the following description: "Prepared stock and poultry food (exclusive of medicated foods, also exclusive of stock and poultry foods invoice value of which is higher than 10 cents per pound)." This basis of rates generally applies on interstate traffic between points in Missouri, Kansas, Arkansas, Oklahoma and Texas. In most of these states it also applies intrastate. Shippers of stock and poultry food located at Kansas City and other points without the state have been selling stock and poultry food in Oklahoma upon the corn rates, creating competition which it is impossible for local manufacturers to meet upon a class B rate basis in this state.

The carriers have failed or refused voluntarily to establish reasonable rates within the state, resulting in discrimination against

parties desiring to manufacture stock and poultry food. Complainants have asked that the corn basis of rates be established between points in Oklahoma, subject to the same minimum weight and commodity description as the carriers have voluntarily applied interstate.

The defense of the carriers consists in the claim that notwithstanding that they have for some time, and still are, applying the corn basis interstate, that the wheat rates should apply in Oklahoma, and one witness objected to any action by the Commission, claiming that the carriers were intending to advance the interstate rates some time in the near future, and would then establish the same basis intrastate in Oklahoma.

We are not impressed with this defense. Manufacturers at Shawnee, Oklahoma City, and other points now have their machinery installed, and are unable to operate because of the lack of reasonable rates. Clearly these shippers are entitled to the same basis of rates as the carriers have maintained interstate.

The Commission is also asked to establish transit privileges similar to the regulations now applying interstate, the only change desired being an increase in the percentage of ingredients other than grain, seeds, alfalfa hay, and products thereof, which shall be permitted in the mixtures upon which transit privileges shall apply. The following is a quotation from Chicago, Rock Island, & Pacific tariff 10757-K, item 255, showing the regulations which now apply interstate on that line, which are fairly representative of those in effect on all the carriers operating into and out of Oklahoma:

"A carload shipment consisting of mixtures or blended products from 80 per cent or more of commodities accorded a transit privilege and 20 per cent or less of ingredients other than grain, seeds, alfalfa hay, or products thereof, may be forwarded against representative transit credits, subject to the following:

"Mixed food or other mixtures or blended products containing more than 20 per cent of ingredients other than grain, seeds, alfalfa hay, or products thereof, will not be accorded transit privilege.

"The nontransit portion will be waybilled from the transit station at the carload rate applicable on the mixture of blended

commodity (as forwarded) independent of the transit portion, except that the nontransit portion will be considered as a part of the carload shipment in applying the minimum carload weight.

"The shipping directions and waybill must have inserted thereon the weight of each product or commodity."

The record shows clearly that interstate shippers are using transit arrangements in the marketing of stock and poultry food at Oklahoma points, to the detriment of local manufacturers, and clearly the latter are also entitled to transit arrangements. The complainants ask that the percentage of foreign ingredients permitted to be increased from 20 per cent to 50 per cent, calling attention to the fact that they claim transit privileges only on the portion of the mixtures consisting of grain, seeds, alfalfa hay, or products thereof, and that the greater the percentage of other ingredients, the greater the percentage upon which flat rates from the transit point will apply, resulting in greater net revenue to the carriers. One of the carriers' own witnesses admits this fact, and could advance no reason why a greater percentage of other commodities should not be permitted, other than same has not been customary interstate.

The shippers claim that interstate manufacturers also, *via* some lines at least, obtain transit arrangements upon the molasses, rice bran, and other commodities, while such would not be possible in Oklahoma, owing to the fact that these other ingredients originate at points without the state, and would not be subject to the rules promulgated by this Commission. Notwithstanding the claim by the carriers that no such practice exists, item 160 of Rock Island tariff 10757-K seems to authorize such an arrangement.

Having in mind also the added revenue to the carriers from an increase in the percentage of nontransit commodities, and also the testimony of shippers, as to the added food value of mixtures containing more than 20 per cent of molasses and other foreign ingredients, we are of the opinion that the percentage of the latter as now applied interstate may be somewhat increased, but not necessarily to 50 per cent. We are inclined to believe that the necessities of the situation will be served by increasing the per cent from 20 to 33 $\frac{1}{3}$ per cent.

An appropriate order will therefore be entered, establishing

the same basis of rates and transit arrangements as now apply interstate, with the single exception as to percentage of ingredients already noted.

It is therefore ordered that the following additions and amendments be made to order 503:

Eliminate from item No. 2 the following:

"Chicken feed made of grain and seed only."

Add to item No. 3, list of articles taking rates as per column No. 2 of item No. 1, the following: "Prepared stock and poultry feed (exclusive of medicated foods, also exclusive of stock and poultry foods, invoice value of which is higher than 10 cents per pound)."

Substitute for paragraph (c) of item No. 7 the following: "(c) Commodities named in item 5, kafir corn, oats, barley, alfalfa meal, alfalfa feed mixtures and prepared stock and poultry feed, 30,000 pounds."

Substitute for rule No. 13 of item No. 10 the following: "Carload shipments of foods or other mixtures or blended products shall be accorded transit privileges as per item No. 10, subject to the following: Feed mixtures containing more than 33 $\frac{1}{3}$ per cent of ingredients other than grain, seeds, alfalfa hay, or products thereof, will not be accorded transit privileges."

The transit privileges shall apply only to that portion of the mixture consisting of grain, seeds, alfalfa hay, or products thereof, and inbound expense bills representative in exact percentage proportion of each of such commodities must be surrendered and the shipper must certify to the agent at transit station by signed declaration on the back of expense bills, indicating the percentage of the constituent parts of the transit portion of the outbound mixture.

The nontransit portion consisting of other ingredients shall be way-billed from the transit station at the flat carload rate applicable upon the mixture or blended commodity (as forwarded) independent of the transit portion, except that the nontransit portion will be considered as a part of the carload shipment in applying the minimum carload weight.

For illustration: If an outbound shipment aggregating 30,000 pounds contains 60 per cent corn, 10 per cent wheat, 10 per cent alfalfa hay, and 20 per cent nontransit ingredients, in-

bound expense bills must be surrendered for 18,000 pounds of corn, 3,000 pounds of wheat, and 3,000 pounds of alfalfa hay. Upon the 6,000 pounds of nontransit tonnage the flat carload rate on the mixture as forwarded will apply.

This order shall be in full force and effect on and after the 1st day of March, 1915.

Corporation Commission of Oklahoma, J. E. Love, Chairman; A. P. Watson, Geo. A. Henshaw, Commissioners.

CALIFORNIA RAILROAD COMMISSION.

IN RE MARIN COUNTY ELECTRIC RAILWAYS.

[Application No. 947; Decision No. 2110.]

Security issues — Plan for financing — Stock subscribers' notes.

A plan for financing the construction cost of an electric railway line by issuing to a construction company the notes and deferred payments of subscribers to the stock of the electric company was not approved, it appearing that only 210.7 shares of the authorized issue of 670 shares had been subscribed to, that only \$802 had been paid in cash out of the \$21,070 due, and that the estimate of the cost of the proposed line approved by the Commission was \$35,000.

[January 29, 1915.]

APPLICATION for modification of the Commission's order authorizing the construction of an electric railway line upon certain conditions; denied.

REPORT OF THE COMMISSION.

FIFTH SUPPLEMENTAL OPINION AND ORDER.

Loveland, Commissioner: This Commission has heretofore authorized the Marin County Electric Railways to issue 670 shares of capital stock of the par value of \$100 per share for the purpose of constructing an electric line of railway in Mill Valley. It was provided in the order that work should not be begun until the applicant had collected \$35,000 from stock subscriptions.

Marin County Electric Railways has heretofore presented a plan for beginning the construction of a unit of its system. This plan contemplated that the Hicks-Folte Corporation should undertake the work, and should accept notes of persons subscribing to

the stock of applicant under certain specified conditions. The Commission made no order thereon, but in an opinion stated that it would hold the matter in abeyance pending the presentation of a more extensive and detailed plan.

The applicant now proposes that it accept the offer of the Hicks-Folte Corporation to construct a portion of its line extending from the Northwestern Pacific Railroad depot, in Mill Valley, for a distance of 1 mile, in the direction of the Cascades, and that it issue to the Hicks-Folte Corporation, for such work, notes and deferred payments of stock subscribers living along the proposed line.

•The applicant submits an exhibit showing stock subscriptions to a total of 210.7 shares, which, if paid at par, would amount to \$21,070. These subscribers, according to this same exhibit, have paid in cash a total of \$802.

The estimate for the first unit of this line, as approved by the Commission, was \$35,000. I do not feel disposed to alter the condition that the applicant should not begin work until it should have received cash from the sale of its stock in the amount of \$35,000, upon the showing presented. Applicant has collected only \$802 from stock subscribers, and I do not regard this as a sufficient showing to warrant an amendment of the original authorization in this matter.

I therefore recommend that this application for a modification of the Commission's order in the matter herein be denied, and submit the following form of order:

ORDER.

Marin County Electric Railways having applied to this Commission for a modification of this Commissioner's order in the above-entitled matter, as outlined in the foregoing opinion, and it appearing, for the reasons stated in the foregoing opinion, that the showing made does not warrant a modification of this Commission's order in this matter,—

It is hereby ordered that the application of Marin County Electric Railways for a modification of said order be, and the same is hereby, denied.

The foregoing fifth supplemental opinion and order are hereby approved and ordered filed as the fifth supplemental opinion and order of the Railroad Commission of the State of California.

CONNECTICUT PUBLIC UTILITIES COMMISSION.

IN RE PETITION OF H. E. REYNOLDS ET AL.

[Docket No. 1445.]

Valuation — Present value — Ascertainment — Company records show no allowance for depreciation.

No conclusion as to the actual present value of a water company's property can be based upon the original book entry of the actual cost of the plant at the time of installation, where no allowance for depreciation has been made.

Rates — Reasonableness — Recoupment of operating losses from enhanced value of real estate.

The reasonableness of the rates of a water company must be determined independently of the question whether losses of the principal owners of the company have been recouped from the resulting enhancement of the value of other real estate owned by them.

Rates — Reasonableness — Comparison with rates of other companies.

The fact that other companies charge rates as high or higher than those complained of is of little weight upon the question of reasonableness, unless the conditions are analogous.

Return — Reasonableness — When appraisal is unnecessary.

A more accurate appraisal of a water company's property than appears in the records on file in the Commission's office and on testimony presented at the hearing is unnecessary in a rate inquiry, where there is a wide margin between actual net return and the rate of return on the investment, which the Commission would be disposed to allow the company, before declaring the return from the rates complained of unreasonable.

Return — Reasonableness — Possibility of increase in patronage.

A reduction of the rates of a water company will not be ordered in the absence of proof of their present unreasonableness, on the mere possibility that an increase in patronage will render them unreasonable in the future.

Water rates — Unreasonableness.

The rates of a water company, of \$3 per 1,000 cubic feet, with a minimum charge of \$20 per year, were held reasonable, where it appeared that after providing for economical operating expenses, interest at 6 per cent on the company's indebtedness, and for annual depreciation, there would be available for dividends about $1\frac{1}{2}$ per cent on the capital stock.

Water rates — Yearly minimum — Payments on quarterly basis.

Water used in excess of the minimum allowance should not be charged for on the quarterly basis, since this makes possible a charge for excess water during quarters of heavy consumption, although the total amount used may be less than the yearly minimum.

[February 24, 1915.]

PETITION to have the rates of a water company declared unreasonable, and reasonable rates and charges prescribed; denied.

By the Commission: On December 21, 1914, the following complaint and petition, signed by H. E. Reynolds and seventy-seven others, was received by the Commission:

Springdale, Conn., December 9th, 1914.

Public Utilities Commission,

Hartford, Conn.

Gentlemen:

The inclosed circular issued by the Springdale Water Company was recently received. This advance in rate is from \$12 minimum per annum to \$20 or $66\frac{2}{3}$ per cent increase, and from \$1.87 per 1,000 feet to \$3, or over 60 per cent increase.

The lower rates have prevailed for several years, having been made when the number of houses supplied was probably not more than 25 per cent as great as at present, and most of the increase is in users directly on the lines of the mains laid years ago; so we do not see how the company's claim of "largely increased expenses of operation" can be upheld; i. e., increased costs per foot or per house supplied.

We believe that the company should charge enough, when properly managed, to earn fair dividends for its stockholders, but do not believe any such increase in the rates as $66\frac{2}{3}$ per cent is justified. The minimum rate of \$20 per annum is what seems particularly extortionate. Almost all of the houses supplied by this company are small, many of them have only one faucet, and some of the people who had the water put into their houses, because it did not cost more than \$3 a quarter, cannot afford to pay this large increase demanded.

We understand that this matter of change in rates comes under your jurisdiction, and, if that is so, beg that you will give it your attention, and limit the Springdale Water Company to charges that are reasonable and fair.

Yours truly,

H. E. Reynolds and seventy-seven others.

The circular referred to in the foregoing petition reads as follows:

The Springdale Water Company.

Springdale, Conn., November 14, 1914.

You are hereby notified that from January 1, 1915, the rates for water furnished by this company will be advanced to 40 cents per 1,000 gallons, or \$3 per 1,000 feet, with a minimum rate of \$5 per quarter.

This increase in rates has become necessary owing to largely increased expenses of operation, together with the fact that up to the present time the stockholders have never received any dividends on the capital invested, or interest on money advanced by them for extensions.

The foregoing petition was duly assigned for hearing at the city court room, Stamford, on Friday, January 15, 1915, at 11 o'clock in the forenoon, of which hearing all parties in interest had due and legal notice, and at which time and place parties appeared and were fully heard.

This is a petition coming under the provisions of § 23 of chapter 128, Public Acts of 1911, which prescribes a method of procedure for the regulation of rates and service of a public utility company.

The Springdale Water Company was incorporated in 1907, and took over at that time certain real estate and an artesian well, reservoir, and other property which constituted a small private water system owned by Robert Kerr. Stock in the new company was issued to Mr. Kerr or his nominees to the amount of \$12,800 in exchange for organization expenses and the property above referred to. The company's witnesses testified at the hearing that this stock was represented by full value in the property acquired. Subsequently there was issued additional stock to the amount of \$25,800, making a total of \$38,600 outstanding. Liabilities on June 30, 1914, in addition to the capital stock, consisted chiefly of notes of Arthur T. Kerr, president of the company, amounting to \$5,652.94, on which no interest has been paid, and notes of \$7,700 held by a Stamford bank, making the total reported liabilities approximately \$52,000. The assets of the company on June 30, 1914, consisted chiefly of a plant and equipment carried at a book value of \$47,488.17, which was testified to as being based on original cost prices, no deduction hav-

ing ever been made on account of depreciation. Previous to January 1, 1915, the price charged by the company for water was \$1.87 per 1,000 cubic feet, with a minimum charge of \$3 per quarter, which the patron was required to pay even if his actual consumption of water at the rate per 1,000 cubic feet amounted to less than \$3. The company's last annual report to the Commission shows that on June 30, 1914, there were 130 meters in use, and that 72 per cent of the water sold was metered. There were also on that date seventy-three customers using water which was not metered, and from whom the income to the company during the preceding year amounted to \$842.56. Water was also supplied for fire hydrants, under contract with the town, for \$300 for the year.

On January 1, 1915, the company put into effect a rate of \$3 per 1,000 cubic feet, with a minimum charge of \$5 per quarter. This rate, of which complaint is now made, allows the patrons about 250 more cubic feet of water yearly without exceeding the minimum charge; but it was testified by petitioners and admitted by the company that most of the patrons kept within the minimum formerly allowed, so that the slightly increased amount means little as an off-set to the increase of \$2 quarterly in the rate.

The petitioner's case was based on claims, among others, that the book value of the company's investment was much in excess of its present true value, that certain pumping equipment was unnecessarily duplicated, that economies in operation would result in increased net income, that the principal owners of the company had received in enhanced value of real estate owned by them a compensation for any possible loss from the past operations of the company, and that water could be sold at a much lower rate if it were purchased from another company, instead of being pumped from artesian wells as at present.

The only evidence presented as to the value of the company's property was the original entry of the actual cost at the time of installation, corresponding approximately with the capitalization and other indebtedness, as hereinbefore stated, with no allowance for depreciation. On this data no conclusion could be based as to the true present value of the company's property, but, as will hereinafter appear, in the view taken by the Commission of this

case a detailed and authentic appraisal of that value is unnecessary. From the reports of the company on file in this office, and the explanations thereof made by respondent's witnesses, we are of opinion that there has been no such extravagance in operation that the net income of the company could be materially affected merely by the practising of further economies. None of the officers of the company have received any salary for services since its organization, and clerical expenses and cost of operation seem likewise to have been carefully limited. An inquiry into the profits, if any, to the people interested in the water company, accruing through the enhancement of the value of real property also owned by them, might have some possible relevancy if that were the sole or determining factor in the reasonableness of the present rates. It is of chief interest, however, in connection with the intimation conveyed at the hearing that the company's business has been conducted on an almost philanthropic basis during the years past, when an annual loss from operation has been sustained, with no attempt until the present to increase rates. If it is true that loss from this source has been recouped from increased real estate values, arising in part from the operation of the company, the plea of philanthropy is groundless. Whether this is true or not, the reasonableness of the present rates must be determined independently. The possibility of securing water from another company, and furnishing it under such an arrangement at lower rates than possible under the present artesian system, was not properly before the Commission under this petition, and we refrain from expressing any opinion based on such considerations.

Counsel for the company presented evidence showing that other companies in the state charged rates as high as or higher than the ones here complained of. There was, however, no showing of analogous conditions which would warrant much weight being given to the mere comparison. The explanation of the company's financial and operating condition merits more serious consideration. No dividends have been paid since the company was incorporated, and the year ending June 30, 1914, was the first year in which the operating account has shown a profit. Income in that year was \$3,054.01, and expenses \$1,607.59, leaving a balance to profit and loss of \$1,446.42. Deductions from this for

interest on bank loans left a net income of \$920.58. No interest was paid on Mr. Kerr's notes, however, and no deduction made for depreciation. Respondent's counsel claimed that a fair allowance for these two items would have changed the apparent net income into a deficit. The prospective income under the rates complained of, it was declared, would be no more than sufficient to meet the operating expenses and the reasonable interest obligations of the company, permit a justifiable allowance for depreciation, and pay a small dividend on the capital stock.

Assuming that the increase in rates would be followed by no loss of patrons, and that most of these patrons would use, as at present, no more than the amount of water allowed them for the minimum rate, the income of the company for the year ending January 1, 1916, would be \$4,360, which amount includes \$300 for water for fire hydrant use, the same as was reported for the year ending June 30, 1914. With the same operating expenses as in that year, and allowing interest of 6 per cent on the present bank loans, and interest at the same rate on the present balance due Mr. Kerr, a net income of \$1,850 would remain, available for depreciation and dividends. Respondent's counsel suggested an annual depreciation allowance of \$1,275, based on the following percentages:

On electric motor	10%	
On pipe lines	2%	to 3%
On meters	5%	
On brick buildings	3%	to 5%
On pumps	10%	to 15%
On standpipes	10%	

Accepting this estimate for the present purposes, the balance available for dividends would be \$605, which is about $1\frac{1}{2}$ per cent on the capital stock. It is true, however, that the figures used in this computation are in each case those most favorable to the company's contentions. As opposed to these, it is possible that the number of patrons served will increase during the year so as to augment the income, with no corresponding increase in operating expenses. The number of patrons in 1912 was 105; in 1913 115, and in 1914 203. It is also possible that the operating expenses may be slightly reduced, and net income thus increased, but the testimony at the hearing failed to indicate wherein such a saving could be anticipated.

On account of the present wide margin between actual net return and the rate of return on investment which the Commission would be disposed to allow the company before declaring such return unreasonable, it has not been considered necessary to ask for a more accurate appraisal of the company's property than appears in the reports on file in this office and from the testimony presented by both parties at the hearing.

It is possible, if the company secures a considerable number of new patrons in the future without incurring proportionate additional operating and overhead expenses, that the rates now in force will yield an unreasonably large net return, and at such time a petition should be entertained for the reduction of rates. On the mere possibility of such an increase, however, and in the absence of proof of present unreasonableness, we can order no such reduction. While it may be conceded that the present rates are high in comparison with those of many other water companies in the state, yet upon consideration of all the facts herein the Commission does not find that the company's present rate of \$3 per 1,000 cubic feet, with a minimum charge of \$20 per year, is unreasonable. The custom of charging for water used in excess of the minimum allowance on a quarterly basis is, however, disapproved in this case, since it makes possible a charge for excess water during the quarters when the most water is used, even though the total annual consumption may be less than the amount which \$20 would purchase at the rate of \$3 per 1,000 cubic feet. Under the circumstances it is inequitable to require payment for excess water, unless the total amount used in the year exceeds what the minimum yearly charge of \$20 would purchase.

We recommend, therefore, that the Springdale Water Company make no charge in excess of \$20 for water consumed by any patron during any fiscal year of the company, unless such annual consumption of water shall exceed 6,666 cubic feet, and then only for the amount of such excess consumption.

Subject to the foregoing recommendation, and for the reasons hereinbefore stated, the petition is denied.

We hereby determine and direct that notice of the foregoing finding and decree be given to ten signers of said petition and to the respondent company by Henry F. Billings, Secretary of this Commission, by forwarding by registered mail true and attested

copies of said finding and decree, addressed one each to H. E. Reynolds, Frank H. Hoyt, Geo. W. Wood, P. V. C. Baker, Daniel E. Horton, C. B. Marshall, Lydia A. Ferris, Charles G. Waterbury, Mrs. M. A. Dann and Wm. P. Waring, all at Springdale, Connecticut, and one to the Springdale Water Company, c/o William B. Pierce, Secretary, Stamford, Connecticut, on or before the 24th day of February, 1915, and due return make hereon.

Richard T. Higgins, T. B. Ford, J. H. Hale, Public Utilities Commission.

Note.—For consideration to be given increased business, see *John H. Allen Seed Co. v. Chicago & N. W. R. Co.* ante, 352, and note, 356.

Comparisons of rates charged by other utilities, or in other territory, or to other persons, have some evidential value. *Re Chicopee Petition* (1909) Mass. G. & E. L. C. R. 60; *Re Proposed Order to Express Cos.* (1909) 2 & 3 Okla. C. C. R. 550. See also *Alabama & V. R. Co. v. Mississippi R. Commission*, 203 U. S. 496, 51 L. ed. 289, 27 Sup. Ct. Rep. 163. One of the methods of determining what is a reasonable rate of fare or charge for transportation is to show that other companies of a similar character charged the same rate for transportation for the same or for a longer distance. *Chicago Union Traction Co. v. Chicago*, 199 Ill. 645, 65 N. E. 470.

But comparison with other rates is not conclusive as to the reasonableness of a particular rate.

Thus, what a company may choose voluntarily to do furnishes no criterion for the measurement of the power of the legislature, and does not furnish a standard by which to measure the reasonableness of a rate prescribed by the legislature. *Lake Shore & M. S. R. Co. v. Smith*, 173 U. S. 684, 43 L. ed. 858, 19 Sup. Ct. Rep. 565.

That the city authorities have made a rate too low for gas to one city makes no difference in the proper determination of a rate to be charged in another city supplied by the same company. *Re Southern County Gas Co.* (1913) 2 Cal. R. C. R. 879.

Comparison of rates cannot lead to any permanent results, for the reason that the rate taken as a standard is not known to be reasonable *per se*. Report of Committee on Rates and Rate Making, 1 Public Service Regulation, 768.

In *Public Service Gas Co. v. Public Utilities Comrs.* 84 N. J. L. 463, 87 Atl. 651, it is said: "In determining the justice and reasonableness of rates, perhaps no better test can ordinarily be found than the rates customarily charged in localities similarly situated, although we do not say that even that test is infallible."

The fact that a schedule of rates is higher or lower than other

schedules in force elsewhere or at other times in this state does not necessarily determine its validity. *Chicago & N. W. R. Co. v. Dey*, 1 L.R.A. 744, 2 Inters. Com. Rep. 325, 35 Fed. 866.

The fact that another trolley line has sold six tickets for 25 cents, or the fact that the company in question has formerly sold six tickets for 25 cents, is not conclusive against it as to the reasonableness of such a fare. *Wilmington City R. Co. v. Taylor*, 198 Fed. 159.

In order to have the comparison of any great value, the conditions must be identical, or at least very similar. *Northern P. R. Co. v. Keyes*, 91 Fed. 47; *Storrs v. Pensacola & A. R. Co.* 29 Fla. 617, 11 So. 226; *Southern R. Co. v. Railroad Commission*, 42 Ind. App. 90, 83 N. E. 721; *Hopper v. Chicago, M. & St. P. R. Co.* 91 Iowa, 639, 60 N. W. 487; *People ex rel. New York, N. H. & H. R. Co. v. Public Service Commission*, 159 App. Div. 531, 145 N. Y. Supp. 503; *Kindel v. Adams Exp. Co.* 13 Inters. Com. Rep. 493; *Sherry v. Denver & R. G. R. Co.* (1913) Colo. S. R. R. C. Case No. 39; *Re Chicopee Petition* (1909) 24 Mass. G. & E. L. C. R. 60; *Re Oregon Tele. Co.* (1909) 3 Wis. R. C. R. 534; *Re Plymouth Tele. Exch.* (1912) 9 Wis. R. C. R. 169.

Comparisons between rates of two states are of little value unless all of the elements that enter into the problem are presented. *Smyth v. Ames*, 169 U. S. 466, 42 L. ed. 819, 18 Sup. Ct. Rep. 418.

But conditions are usually very dissimilar, and the result is that, ordinarily, comparisons of rates are of very little value, and resort must be had to other tests.

Where water rates are particularly subject to the actual conditions of supply, and these vary so widely, except for contiguous territory, comparisons are of little value. *Re Minimum Water Rates by Meter* (1912) 1 N. J. P. U. C. R. 415.

The fact that the price of a commodity sold by a public service corporation is lower than that sold by other companies of the same size is not conclusive on the question as to fair price. The company's present ability and immediate prospects must also be considered. *Re Beverly Petition* (1911) 26 Mass. G. & E. L. C. R. 15.

The public is in any case entitled to the lowest reasonable price at which a company can afford its service, irrespective of prices elsewhere. *Re Charlestown Petition* (1911) 26 Mass. G. & E. L. C. R. 19.

It has been said that the comparison of express rates should be given more consideration, in ascertaining the reasonableness of rates, than freight rates, since express companies use about the same amount of equipment in proportion to the maximum business done in all parts of the country, and the question of the amount involved in the construction, maintenance, and equipment of the railroad is not ordinarily an element in express rates. *Re Proposed Order to Express Cos.* (1909) 2 & 3 Okla. C. C. R. 550.

GEORGIA RAILROAD COMMISSION.

IN RE APPLICATION GEORGIA RAILWAY & POWER
COMPANY.

[File No. 8907.]

Service — Street railways — Decrease in revenues.

A street railway company, upon showing a large decrease in its revenues, owing to a general business depression, is entitled to relief from expense of all service in excess of the reasonable needs of the public.

Service — Street railways — Conditions in respect to individual lines.

The Commission, in investigating the question whether a street railway company is supplying excessive service, will not proceed upon the theory that a decrease in the use of all the lines of the system, as a whole, justifies less service on any individual line, but will ascertain service conditions, facilities, and uses on each individual route, and will pass upon each without reference to other routes in the system.

Service — Curtailment owing to business depression — "Rush hour" cars.

Curtailment of expenses necessitated by decrease in travel, and consequent falling off of revenues of a street railway, owing to a general business depression, should not necessarily be made by taking off cars operated during "rush hours," since widespread business depression affects travel for pleasure and on Sundays and holidays more than it does travel necessary for persons to get to their work or places of business.

Service — Street railways — Seats for passengers.

Adequate urban street railway service does not mean that every passenger on every car operated should be furnished a seat, but that the company should provide reasonable seating accommodations in its cars for such patrons as desire them, in so far as it can reasonably anticipate and measure the volume of traffic to be taken care of.

Service — Street railways — Peak point loads.

The facilities of an urban street railway company are fairly reasonable where the peak point loads do not exceed 20 per cent of the seating capacity for a continuous period of not more than thirty minutes, with schedules operated on not exceeding a ten-minute headway, extending over such a reasonable period as to show that the traffic is permanent.

Commissions — Powers — Street railway schedules.

It is not within the power of the Commission to operate street car systems and to lay out all their schedules, its province merely being to compel reasonably adequate and efficient service, leaving the details of management and operation to the company.

Service — Excess in facilities.

It is just as much the duty of the Commission to allow a reasonable

reduction in facilities shown to be in excess of the needs of the public, as to order more service when it is shown to be inadequate.

Service — Street railways — Revision of schedules to meet needs of the traffic.

A street railway company was permitted to revise certain of its schedule and service so as to reduce its existing service, which appeared to the Commission to be excessive, owing to a falling off in traffic and a consequent decrease in revenues, due to general business depression; but was ordered to continue existing schedules and service on certain lines, where a reduction asked for would render the service inadequate; and was further ordered to extend rush hour service on one line, where the needs of the public required it.

[January 28, 1915.]

APPLICATION for authority to revise street car schedules and service on certain routes in the city of Atlanta and suburbs; granted in part and denied in part.

By the **Commission**: Alleging that, under existing schedules on certain street car routes in the city of Atlanta and suburbs, it is now furnishing larger service and more facilities than is reasonably required by present traffic, the Georgia Railway & Power Company asks that it be authorized to revise existing schedules on these routes so as to discontinue this alleged excessive service.

Supporting the petition in a general way, the company shows that gross passenger receipts on its entire city and suburban system for the last four months of 1914, during which period the full effects of the world-wide business disturbances and depression have been felt, are considerably less than for the same periods in 1913 and 1912.

The comparisons are as follows:

	Sep- tember	October	No- vember	De- cember	Four Months
1912	\$240,715	\$239,163	\$228,989	\$239,966	\$930,638
1913	244,000	244,411	233,988	246,386	968,785
1914	235,411	234,210	211,324	222,713	903,658
(Decrease 1914 under 1913)	\$ 8,589	\$ 10,201	\$ 22,664	\$ 23,673	\$ 65,127
Percentage of Decrease	3.5%	4.2%	9.7%	9.6%	6.7%
Decrease in cash fares 1914 under 1913	171,764	204,017	453,280	473,454	1,302,515

The company assumes that its service facilities in 1913 were

adequate, and that, therefore, the considerably lesser use made of substantially the same or somewhat increased facilities in 1914 than in 1913 indicates excessive facilities at this time, and justifies the reductions in service asked. The above figures are for the entire city and suburban system; some of the individual routes show slight increases over 1913.

It is not claimed that the company is losing money on its street car service.

The application is based upon the allegation that the company is at this time supplying more facilities upon certain lines than the volume of traffic requires. Under the general showing made, the Commission has felt that the company was entitled to a thorough inquiry as to the questions raised in its petition, and to relief from the expense of any service which it showed, beyond question, was in excess of the reasonable needs of the public.

We have not proceeded upon the theory that a decreased use of all the lines of the system as a whole justified less service on any individual route. We have undertaken to ascertain service conditions, facilities, and uses on each individual route, and to pass upon each without reference to other routes in the system.

The company seems to have assumed that the excessive service alleged is in facilities operated during the "rush hour" periods, and therefore, in a majority of the routes under investigation, seeks to lessen its "rush hour" service by taking off the extra cars operated during these periods. A careful study of the traffic data furnished has not satisfied us that this assumption is correct. While it is entirely reasonable and wholly probable that there was during December, 1914, a smaller volume of traffic during "rush hours" than in 1913, the Commission is of the opinion, from many considerations, that this decrease has been relatively smaller than in "nonrush hours." Widespread business depression affects travel for pleasure and on Sundays and holidays, when everyone is economizing, more than it does travel necessary for people to get to their work or places of business. Beyond question, the abnormal weather conditions prevalent in this vicinity during practically the past three months have had material effect upon street car travel for pleasure, for shopping, on holidays, and on Sundays, to a larger extent than it has on travel by persons who daily use the cars in getting to offices,

stores, and shops; and this notwithstanding that there are many out of employment.

Granting, however, that the "rush hour" traffic is reduced under 1913, the Commission is not inclined to agree with the assumption that the facilities supplied during these periods in 1913 were entirely adequate on every route. On some routes we feel sure they were not, and in making this statement the Commission does not base it upon the contention that every passenger on every car operated should be furnished a seat. This contention may be sound in theory; under street car traffic conditions as they exist daily, such a theory is frequently impossible of actual operation.

Street car passenger travel is the most human traffic of which we have knowledge. It is the most erratic and uncertain. The average man or woman takes the first car passing. It may be packed to the platforms with human freight; another following in sight may be entirely empty, but not one in twenty of the waiting intending passengers will await the second car. The result is that operating on a two or three minute headway, or even less, one car goes packed with strap-hangers, while immediately behind it follows another with three fourths of its seating capacity unoccupied. Again, the average person seems to prefer riding on a loaded car, to riding "all by his or her lonesome" on another car equally as comfortable. Men (and women) are gregarious,—they like to go in flocks or herds, for company's sake.

It is, in our opinion, the duty of a common carrier to provide seats—that is, reasonable accommodations—in its cars for such patrons as desire them, in so far as they can reasonably anticipate and measure the volume of traffic which will offer. During certain hours of the day, experience shows that there is, with fair regularity, an estimable volume of traffic. This should be provided for. But this does not mean that if an average of forty passengers customarily board a given schedule on a certain route upon which is operated a forty-seat car, that the car is then loaded to its reasonable capacity, and that when forty-one passengers begin to ride, additional facilities must be provided.

Careful observation has shown that an appreciable percentage of regular street car patrons prefer riding on the platforms, to occupying seats inside the cars. These are styled "voluntary standees." Again, it must be borne in mind that city street car

transportation is generally for comparatively short distances. A given route we will say is 5 miles long; cars are regularly operated the entire distance of the route. At an ascertained peak point, where the load is always heaviest, a forty seat car will customarily have on board, say forty-eight passengers. This maximum was only reached one block back. At the next block forward, the car begins to discharge its load, and within two or three blocks the load is again below the seating capacity, no one having stood for a longer distance than three or four blocks, or for a longer time than five or ten minutes. This particular schedule may have been (and observation demonstrates this) the only one at all overloaded during the whole day. Conditions frequently arise in street car traffic when it is impossible to avoid overloading for short distances or for short periods of time.

Taking into consideration such conditions as above, some Commissions have held that facilities are fairly reasonable where the peak point loads do not exceed 30 per cent of the seating capacity offered for a continuous period of thirty or forty minutes.

In our opinion, an allowance of 30 per cent over the seating capacity for standees, whether voluntary or involuntary, for short distances, is too large. We are rather inclined to allow only 20 per cent on this account, to be extended not longer than thirty minutes, with schedules operated on not exceeding ten-minute headway. It would not be reasonable to apply this rule to only one day's travel, or even a week's. The congestion should extend over such a reasonable period as would show that it is regular, and not spasmodic; that it is permanent, and not temporary and due to temporary conditions.

It would be unreasonable to require a street car carrier to provide equipment sufficient to provide a seat for every passenger on every schedule of every day of every year, and for every distance. This is not only unreasonable,—it is impossible, even if the public would render the absolutely necessary co-operation in distributing the loads as between the cars offering.

Conditions on suburban lines, where as a general rule passengers ride longer distances, require different treatment. The passenger who is forced to stand 4 or 5 miles occupies a different position than one forced to stand 4 or 5 blocks.

We have deemed it advisable to submit the foregoing general

observations in order that the public, who sometimes grow impatient with momentary conditions or others impossible to entirely remedy, may be reminded that the carrier is only required by law to supply *reasonably* adequate and comfortable facilities, and that this principle of law and equity has been kept in view in reaching the conclusions hereinafter announced.

It is not the purpose of this Commission, nor is it within its power, to operate the street car systems in all the cities of the state, and lay out all their schedules. We cannot do this in Atlanta. It is the province of the Commission, leaving the details of management and operation to the company, to compel reasonably adequate and efficient service. This we have undertaken, and in this task have, generally speaking, had the willing and effective co-operation of the company. If at any time, or upon any route, there is shown to be facilities and service in excess of the reasonable needs of the public, it is just as much our duty to allow a reasonable reduction of this excess as to order on more service when it is shown to be inadequate. In the pending application we have studied conditions, traffic, and service on each route named, and our conclusions and action on each are based upon such facts as we have found to exist. Our action on each route is based upon conditions as they now exist. We do not believe these conditions are permanent. In fact, the data supplied show that they are slightly improving already.

The petitions of the company cover the following routes:

Route No. 1—Marietta and Decatur streets.

There is now being operated on this route an all-day service at ten-minute intervals, between Cornelia street on the east, and Brady avenue and Howell Mill road on the west, with a twenty-minute headway from thence to the end of the route on the Howell Mill road.

It is desired now to operate the all-day service at fifteen-minute intervals, from terminus to terminus. This decreases the service on the greater part of the line, but increases it on the western end of the route. There are other routes, however, which also serve a considerable part of Marietta street with frequent schedules.

The following data is furnished as to earnings and traffic on this route:

	December	November	October	September
1913	\$9,279.05	\$8,993.40	\$9,441.15	\$9,165.10
1914	8,236.05	7,889.25	9,031.95	9,296.70
Decrease 1914	\$1,061.00	\$1,104.15	\$409.20	\$131.60 ¹
Decrease in Cash Fares ..	21,220	22,083	8,184	2,632 ¹
Daily Average	684	736	264	87 ¹
Percentage of Decrease ..	11.4%	12.2%		

¹ Increase.

Thirty-six seated cars are operated, with 210 schedules daily. Actual counts at two peak points for one whole day showed only 20 cars with seating capacity taken, and of these only 5 cars in excess of the probable voluntary and short distance standees.

One hundred and ninety of the 210 schedules operated carried less than the seating capacity of each car.

The prayer of petitioner as to this route is granted.

Route No. 4—Inman Park to Grant Park.

There is now being operated on this route a regular all-day service at ten-minute intervals, and in addition thereto extra cars sufficient to furnish service during the morning and afternoon "rush hours" between Grant Park and Moreland avenue, at intervals of five minutes, and also extra cars sufficient to furnish service at five-minute intervals during the "noon rush hours" between the center of the city and Moreland avenue.

It is desired to discontinue the operation of the extra cars during the "noon rush hours" between the center of the city and Moreland avenue.

The following data as to earnings and traffic has been furnished:

	December	November	October	September
1913	\$20,337.55	\$19,442.35	\$20,270.10	\$20,315.65
1914	18,636.70	17,546.30	19,850.35	19,749.55
Decrease	\$1,700.85	\$1,896.05	\$419.75	\$331.30
Decrease in Cash Fares	34,017	37,921	8,395	6,626
Daily Average	1,097	1,264	270	220
Percentage of Decrease	8.5%	9.2%		

Cars on this route seat 36 passengers. Counts have been made on two days, of the number of passengers on each car as it passed the corner of Piedmont avenue and Edgewood avenue during the noon hours.

These counts show that, with extra cars off, the remaining cars operated during the noon hours would have had to carry, each,

On December 30th, going west	47 passengers
“ “ “ east	46 “
On January 5th, “ west	40 “
“ “ “ east	38 “

In our opinion, the service on this route during the noon rush hours is not excessive, and the prayer of the petition in regard thereto is denied.

Route No. 6—Capitol Avenue and Forrest Avenue.

The present service on this route is regularly all day at ten-minute intervals, with extra cars during the morning, noon, and afternoon rush hours, sufficient, with the regular cars, to furnish service on that portion of the route extending from Ormond street on the southern end to the intersection of North avenue and the Boulevard on the northern end of the route, at five-minute intervals. It is desired to discontinue the extra cars during the noon or mid-day rush hours.

The following data as to earnings and traffic on this route is supplied:

	December	November	October	September
1913	\$15,307.45	\$14,397.40	\$14,675.65	\$14,273.90
1914	13,459.50	12,229.60	13,445.05	13,447.25
Decrease	\$1,847.95	\$2,167.80	\$1,230.60	\$826.65
Decrease in Cash Fares	36,959	43,356	24,612	16,533
Daily Average	1,192	1,445	794	551
Percentage of Decrease	12%	15.5%		

Cars on this route seat twenty-eight. Counts on two days on the north and south ends of the line were made at Forrest avenue and Peachtree, and at Whitehall and Mitchell streets, which showed that, with the extra cars now operated taken off, the remaining regular cars would have had to carry average loads as follows:

At Peachtree and Forrest avenue:

December 31st, going south	37 passengers per car
“ “ “ north	33 “ “
January 6th, “ south	24 “ “
“ “ “ north	31 “ “

At Whitehall and Mitchell streets:

December 31st, going south	22 passengers per car
“ “ “ north	24 “ “
January 6th, “ south	23 “ “
“ “ “ north	29 “ “

These two counts not conclusively showing the "noon rush hour" traffic, we have, since the hearing on this application, had additional counts made on three days, which show as follows:

At Peachtree street and Forrest Avenue:

On January 22d, going south	26 passengers per car
" " " " north	30 " " "
On January 25th, " south	33 " " "
" " " " north	35 " " "
On January 26th, " south	30 " " "
" " " " north	30 " " "

At Pryor and Mitchell streets:

On January 22d, going south	23 passengers per car
" " " " north	29 " " "
" " 25th, " south	25 " " "
" " " " north	29 " " "
" " 26th, " south	25 " " "
" " " " north	31 " " "

These figures are averages for the entire rush hour period, including the "lean" loads at the beginning and ending. They do not show excessive congestion for the entire period, and we have therefore studied the individual loads during the period, and the length of time covered by consecutive overloads.

These show on the north end of the route at Peachtree and Forrest avenue consecutive loads, with trippers off, on different days as follows:

On January 22d:—25, 36, 29, 36, 34, 29, 31, 26, one way, and 33, 41, 38, 32, 39, 35, 38, 37, 36, in the opposite direction.

On January 25th:—32, 34, 54, 29, 46, 47, 45, 46, one way, and in the opposite direction 42, 36, 28, 46, 41, 42, 49, 38, 31.

On January 26th:—29, 49, 33, 45, 43, 46, 31, 21, one way, and in the opposite direction, 40, 38, 8, 40, 32, 31, 37, 25, 30.

On the south end of the line, with trippers off, loads on consecutive individual cars at the corner of Mitchell and Pryor streets would have been as follows:

On January 22d:—29, 29, 26, 23, 25, 27, 23, 22, 28, one way, and in the opposite direction, 29, 31, 31, 20, 24, 19, 82, 42, 25.

On January 25th:—38, 32, 25, 31, 17, 20, 29, 28, 32, one way, and in the opposite direction, 27, 26, 15, 41, 85, 32, 26, 21.

On January 26th:—28, 31, 25, 25, 17, 20, 38, 23, 22, 23, one way, and in the opposite direction 34, 22, 15, 34, 22, 93, 53, 28, 24.

As cars operated on this route seat only 28 passengers, the Commission is not fully satisfied that the noon rush hour service on this route is excessive, and for the present will deny the petition to discontinue it.

Route No. 7—Luckie and East Hunter Streets.

There is now being operated on this route a regular all-day

service at ten-minute intervals, and, in addition thereto, sufficient extra or tripper cars along the northern or Luckie street end of the route during the morning and afternoon rush hours to afford service at five-minute intervals.

The company desires to discontinue the operation of these extra cars on the northern end of the route during the morning and afternoon rush hours, and supports its petition with the following data as to earnings and traffic:

	December	November	October	September
1913	\$10,128.15	\$10,098.40	\$9,914.75	\$10,008.25
1914	8,006.60	7,909.20	8,560.60	8,364.95
Decrease	\$2,121.55	\$2,189.40	\$1,348.15	\$1,643.30
Decrease in Cash Fares	42,431	43,788	26,963	32,866
Daily Average	1,369	1,459	870	1,095
Percentage of Decrease	21%	21.6%		

Counts of actual traffic during rush hours on three days indicated average loads at a peak point for regular cars, with trippers off, as follows:

At Spring and Luckie streets:			
December 30th, going south, A. M.	27	passengers	per car
" " " north, "	9	"	"
December 31st, " south, "	25	"	"
" " " north, "	9	"	"
January 8th, " south, "	28	"	"
" " " north, "	22	"	"
December 30th, going south, P. M.	13	passengers	per car
" " " north, "	41	"	"
December 31st, " south, "	13	"	"
" " " north, "	39	"	"
January 8th, " south, "	18	"	"
" " " north, "	33	"	"

Cars on this route seat twenty-eight.

The traffic on this line for the entire day shows rather a heavy falling off as compared with 1913, being 21.6 per cent off in November, and 21 per cent off in December, 1914. A study of the traffic figures during the morning rush hours indicates that the extra cars now being operated could be taken off without bringing about unreasonable congestion on the remaining regular cars at ten-minute intervals. We are not satisfied that this is true as to the traffic which offers during a congested period in the afternoon. The actual counts taken show heavy average loads for 28-seat cars going north every afternoon of the three days observed, to wit: 41, 39 and 38. Twenty-eight-seat cars carrying such average loads would be over-loaded.

The petition of the company to discontinue the extra cars operated during the morning rush hour period is granted: and the petition to discontinue extra cars operated during the afternoon rush hours is denied.

Route No. 8—Inman Yards—White City.

1. On the eastern or southern end of this route, from the center of the city to White City, there is now being operated a regular all-day service at ten-minute intervals, with extra cars sufficient to afford during the afternoon rush hours service at five-minute intervals.

It is desired to discontinue the operation of these extra cars during the afternoon.

2. On the western or northern end of the route, from the center of the city toward Inman Yards, as far as Howell Station, there is now operated a regular all-day service at ten-minute intervals, and beyond Howell Station to Inman Yards at twenty-minute intervals.

In addition to this regular service, there are operated sufficient extra cars during the morning and afternoon rush hours to afford a service at ten minute intervals between Howell Station and Inman Yards. It is desired to discontinue these extra cars, so that the service to be hereafter furnished will be at ten-minute intervals between the city and Howell Station, and at twenty-minute intervals beyond Howell Station.

3. Between the center of the city and Inman Yards, in addition to all of the above-mentioned service, there are being operated certain special extra cars, making double headers, on certain morning and afternoon schedules, leaving the center of the city for Inman Yards at 6:15, 6:25, and 6:35 A. M., and 4:55, 5:05, 5:15, 5:25, 5:35, 5:45, and 5:55 P. M. It is desired to discontinue these special cars.

The earnings and traffic on the entire route during the last four months of 1914 and 1913 are shown to have been:

	December	November	October	September
1913	\$11,596.60	\$11,108.40	\$11,472.20	\$11,515.35
1914	9,842.75	9,211.20	10,389.95	10,694.75
Decrease	\$1,753.85	\$1,897.20	\$1,082.25	\$820.60
Decrease in Cash Fares	35,077	37,944	21,665	16,412
Daily Average	1,121	1,264	699	547
Percentage of Decrease	15%	17%		

Cars on this route seat 28.

Counts on each end of the route, on two days, at two peak points, have been made, and show for the south end of the route that, with the afternoon trippers off, the remaining regular cars would carry average loads as follows:

At Washington and Hunter streets:

On January 5th, going south, P. M.	39	passengers	per	car
" " " " north, "	8	"	"	"
On January 7th, " south, "	44	"	"	"
" " " " north, "	12	"	"	"

While the north-bound afternoon traffic on this end of this route is very light, the south or homeward bound volume of traffic, an average of 39 per car for January 5th and 44 per car on January 7th, is too heavy for 28-seated cars, and the petition to discontinue trippers during the afternoon rush hours between the center of the city and White City is denied.

The north end of Route 8, along Marietta street, is also served in part by other routes, but the counts of actual traffic at the peak point on two days indicates a larger volume of traffic during rush hours, both morning and afternoon, than can be comfortably cared for on 28-seat cars with the extra cars discontinued. These counts show that the regular cars remaining would have to carry average loads as follows:

At Marietta and Foundry streets:

On January 5th, going south, A. M.	20	passengers	per	car
" " " " north, "	45	"	"	"
On January 7th, " south, "	22	"	"	"
" " " " north, "	37	"	"	"
On January 5th, going south, P. M.	23	passengers	per	car
" " " " north, "	46	"	"	"
On January 7th, " south, "	37	"	"	"
" " " " north, "	35	"	"	"

To judge from the character of traffic using this route, we are inclined to the opinion that, with improving business conditions, the shops and industries in the territory served will gradually increase their forces of employees, and that street car traffic will soon begin to increase.

Upon the showing as made, the Commission feels constrained to deny the petition for the discontinuance of the present rush hour service on this end of the route also.

Route No. 11—Courtland and Washington Streets.

There is now operated on this route a regular all-day service at ten-minute intervals, and in addition thereto sufficient extra cars on that portion of the southern end of the route from the center of the city to Weyman avenue, to furnish service at five-minute intervals during the morning and afternoon rush hours.

The earnings and traffic for the entire route during four months have been as follows:

	December	November	October	September
1913	\$10,277.55	\$9,720.00	\$9,951.10	\$10,233.00
1914	8,981.20	8,380.65	9,310.55	9,462.50
Decrease	\$1,296.35	\$1,339.35	\$640.55	\$770.50
Decrease in Cash Fares	25,927	26,787	12,811	15,410
Daily Average	836	892	413	513
Percentage of Decrease	12.6%	13.8%		

Cars on this route seat twenty-eight.

Two counts of traffic on separate days have been made at the peak point, showing that with extra cars discontinued the remaining regular cars would have been loaded as follows:

At Washington and Hunter streets:

On December 31st, going south, A. M.	11	passengers per car
“ “ “ “ north, “	37	“ “ “
On January 6th, “ south, “	14	“ “ “
“ “ “ “ north, “	40	“ “ “
On December 31st, “ south, P. M.	46	“ “ “
“ “ “ “ north, “	15	“ “ “
On January 6th, “ south, “	41	“ “ “
“ “ “ “ north, “	14	“ “ “

In our opinion there is not excessive service on this line during rush hours, and the petition is denied.

Route No. 12—Cooper Street—English Avenue.

Regular all-day service now in effect on this route is at fifteen-minute intervals, with extra or tripper cars during morning and afternoon rush hours, which with the regular cars furnish service at seven and one-half-minute intervals over that portion of the route extending from the center of the city to the corner of Bellwood avenue and Chapel road.

It is desired to discontinue this extra service during morning and afternoon rush hours.

Data as to earnings and traffic of the entire route show as follows:

	December	November	October	September
1913	\$7,539.85	\$6,873.55	\$7,505.50	\$7,706.80
1914	6,569.05	5,914.40	6,673.75	7,018.80
Decrease	\$970.80	\$959.15	\$831.75	\$698.00
Decrease in Cash Fares ..	19,416	19,183	16,635	13,760
Daily Average	626	619	536	458
Percentage of Decrease ..	12.8%	14%		

The regular cars and some of the extra cars used on this route seat 28. Some of the extra cars seat 40.

Counts during rush hours at the peak point on two days show that, with the extra cars off, the regular 28-seat cars would have had average loads as follows:

At Marietta street and Jones avenue:

On December 31st, going east, A. M.	37 passengers per car
“ “ “ “ west, “	8 “ “ “
“ “ “ “ east, P. M.	20 “ “ “
“ “ “ “ west, “	50 “ “ “
On January 5th, going east, A. M.	42 passengers per car
“ “ “ “ west, “	7 “ “ “
“ “ “ “ east, P. M.	17 “ “ “
“ “ “ “ west, “	58 “ “ “

Under the showing as made, the petition to discontinue the extra service during rush hours is denied.

A study of the traffic on the individual schedules indicates that the morning rush hour period, to wit: 5:00 A. M. to 7:45 A. M., longer than the volume of traffic requires, and, if the company so desires, it is permitted to make this period from 5:30 A. M. to 7:30 A. M.

Route No. 13—Irwin and McDaniel Streets.

There is now being operated on this route regular all-day service at twenty-minute intervals, with morning and afternoon rush hour service at fifteen-minute intervals.

Traffic figures and earnings are shown for the entire route as follows:

	December	November	October	September
1913	\$4,557.25	\$4,313.80	\$4,494.75	\$4,496.85
1914	3,903.45	3,787.85	4,254.65	4,214.00
Decrease	\$653.80	\$525.95	\$240.10	\$282.85
Decrease in Cash Fares ..	13,076	10,519	4,802	5,677
Daily Average	421	350	155	189
Percentage of Decrease ..	14.3%	12.2%		

Cars on this route seat 28.

The revision of schedules desired on this route would reduce the rush hour service from four to three cars per hour, each way, and the traffic now being hauled by four cars per hour would have to be accommodated on three.

Counts of the traffic at two peak points were made and submitted for only one day, and showed that, with the reduced service, the 28-seat cars operated would have carried average loads as follows:

At Whitehall and Cooper streets:		
Going north, A. M.	.....	28 passengers
" south, "	.....	7 "
" north, P. M.	.....	12 "
" south, "	.....	33 "
At Houston and Ivy streets:		
Going north, A. M.	.....	7 passengers
" south, "	.....	21 "
" north, P. M.	.....	24 "
" south, "	.....	11 "

Under the showing made as to traffic on this route, the petition to discontinue the present extra service during the mornings and afternoons is granted.

Route No. 15—Piedmont Avenue—Central Avenue.

There is now being operated on this entire route a regular all-day service at ten-minute intervals. On the north end of the route, from the center of the city to Tenth street, during the morning and afternoon rush hour periods, extra or tripper cars are operated so as to afford, with the regular cars, service at five-minute intervals.

It is desired to reduce the regular all-day service over the entire route to service at twelve-minute intervals, and to extend the rush hour service beyond Tenth street, to the terminus of the line, at intervals of six minutes. Cross petitions have been filed by many citizens along this route, and particularly beyond Tenth street, asking that the regular all-day service be kept at ten-minute intervals, and the rush hour service, now at five-minute intervals, be extended to the north terminus of the line.

Data submitted for the entire route show earnings and traffic as follows:

	December	November	October	September
1913	\$9,430.50	\$8,946.40	\$9,153.80	\$9,166.90
1914	9,056.95	8,779.30	9,534.75	9,600.10
Decrease	\$373.55	\$167.10	\$375.95 ¹	\$453.20 ¹
Decrease in Cash Fares ..	7,471	3,342	7,519 ¹	8,664 ¹
Daily Average	241	111	242 ¹	288 ¹

¹ Increase.

Cars on this route seat 28.

Only one partial count of actual traffic on this route, and that for one day on the southern end of the route, and only during the afternoon rush hour period. In so far as this one partial count indicates anything, it showed a good volume of traffic.

This route serves good and growing residential sections. Traffic on the entire route showed actual increases for September and October, 1914, over the same months in 1913, and quite small decreases for November and December. No figures were submitted for the entire year 1914, but as the increases shown for September and October, 1914, as compared with 1913, largely exceeded the decreases for November and December, 1914, under 1913, we have no doubt but that the year's business for 1914 exceeded that of 1913.

The north end of this route serves a thickly populated section before reaching Piedmont Park, along the west side of which it runs, passing by the Piedmont Club, and then along the eastern boundary of Ansley Park. There can be no question of the future of this residential section, and its continued rapid development and growth. With the approach of spring weather, and the larger use then of Piedmont Park, we have no doubt but that the traffic on this line will increase rather than lose in volume.

The difference between the company and its patrons is as to whether the all-day service shall be at twelve or ten minute intervals, and the rush hour service extended to the terminus shall be at six or five minute intervals.

We are of the opinion, upon the evidence submitted, that the petition of the company should be denied, and that, beginning April 1st next, the extra rush hour service now being operated to Tenth street should be extended and operated at five-minute intervals to the terminus of the line, with the regular all-day

service as now continued at ten-minute intervals, and the Commission hereby so directs.

Route No. 17—Main Decatur.

There is now being operated on this route, during the morning and afternoon rush hours, service through to Decatur at five-minute intervals, this service being operated "express" to Elizabeth street in Inman Park, but doing local work after passing Elizabeth street.

In addition, there are being operated extra cars at ten minute intervals as far as Hayes Station, or the city limit on the east. These cars are operated express to Elizabeth street, and local after passing that street. It is desired to discontinue these so-called "Hayes Station trippers."

Statements as to earnings and traffic on this route show:

	December	November	October	September
1913	\$12,147.90	\$11,822.55	\$12,139.55	\$11,914.45
1914	11,320.85	10,794.00	11,836.00	10,202.20
Decrease	\$827.05	\$1,028.55	\$303.55	\$329.55
Decrease in Cash Fares	16,541	20,571	6,071	6,591
Daily Average	501	685	195	219
Percentage of Decrease	6.8%	8.7%		

The cars used in the Hayes Station tripper service seat 28. Some of the through cars to Decatur seat 40 and others 48.

Only one count of actual traffic for one day, October 28th, on this route, has been submitted. That count shows, with "Hayes trippers" off, that at the corner of Edgewood and Piedmont avenues the Decatur cars would have averaged loads as follows:

Going east, A. M.	9 passengers per car
" west, "	37 " " "
" east, P. M.	47 " " "
" west, "	11 " " "

The periods on this route during which the Hayes trippers are operated extend from 5:00 A. M. to 8:30 A. M., and from 4:45 P. M. to 7:15 P. M. At the beginning and the end of these periods the traffic is considerably smaller than at other times, and the average loads above given for the entire rush hour periods do not show the congestion during the period of real congestion, when the loads, with the Hayes trippers off, would run from 50 to 90 per car for an hour or more. These patrons ride from $1\frac{1}{2}$ to 6

miles over periods of time from fifteen to thirty minutes. It is, however, quite evident that the "Hayes trippers" do not have their proportion of the traffic between the center of the city and Hayes Station. It is also quite clear, in our opinion, that this is because of the way in which they are operated.

This route serves the eastern portion of the city, along Edgewood avenue and DeKalb avenue, to the city limits, about 3 miles, and then Kirkwood, Oakhurst, and Decatur. The population of these suburbs is increasing rapidly and continuously.

One need only stand at the Equitable Building morning and afternoon daily, and watch the cars on this route discharge and take on the rush and push of patrons, to be convinced that the service now being rendered as a whole is not excessive. The trouble is that because of the unsatisfactory manner in which the Hayes trippers are operated, the loads are not distributed between them and the larger and more regularly operated Decatur cars.

In our opinion, cars of suburban size should be operated between the Equitable Building and Hayes Station, regularly all day at ten-minute intervals, running express to and from the first street crossing Edgewood avenue in Inman Park east of the Edgewood avenue bridge.

The Decatur cars should be operated on regular all-day schedules at ten-minute intervals, running express to and from the first station east of Hayes Station (Warren's), with about one and a half hour periods of rush hour service in the morning and afternoon at five-minute intervals.

We are told that there are operating difficulties in the way of satisfactorily operating local and express cars on the same route at short intervals in schedules, and this we recognize. These difficulties, however, may not be insurmountable, and the Commission trusts that the company's officials will study the conditions on this line, and submit to the Commission some suggestions as to bettering them. In the meantime, the Commission will not disturb the present service as prayed.

Route No. 18—South Decatur.

Through cars to both East Lake and Decatur are operated over this route, over the same track as far as East Lake Junction, at

thirty-minute intervals all day, the two together affording service at intervals of fifteen minutes as far as East Lake Junction. The Decatur cars leave the city at fifteen minutes after and before the hour, the East Lake cars on and half after the hour.

It is desired to discontinue the through Decatur cars entirely, beginning next after the 7:15 p. m. schedule, and to continue service to Decatur thereafter with a tripper car operating only between East Lake Junction and Decatur in connection with the through car from the city to East Lake.

The effect of this revision would be two fold:

(1) It would reduce the service through South Kirkwood as far as East Lake Junction by half; that is, the large and populous territory from the Soldiers Home Junction to East Lake Junction would have service at only half-hour intervals, instead of fifteen-minute intervals as now:

(2) Passengers for all stations beyond East Lake Junction to the extreme eastern limits of Decatur would have to use the East Lake cars to the junction, and there transfer to the Decatur "shuttle car." Passengers from East Decatur, South Decatur, Poplar Springs, and other points would use the Shuttle car to the Junction, and there transfer to the East Lake car for the city.

Going out, with the cars on time, there would be no wait at the transfer point. Coming into the city, there would be a wait, in the dark and in all kinds of weather, under an open shed, of from five to eight minutes, if both cars were on time.

Data as to earnings and traffic on the South Decatur route—including both East Lake and South Decatur lines—show as follows:

	December	November	October	September
1913	\$ 6,152.15	\$5,908.05	\$6,158.40	\$6,366.35
1914	5,865.35	5,601.00	6,206.70	6,447.25
Decrease	\$286.80	\$307.05	\$48.30 ¹	\$80.90 ¹
Decrease in Cash Fares ..	5,736	6,141	966 ¹	1,618 ¹
Daily Average	185	204	31 ¹	53 ¹
Percentage of Decrease ..	4.6%	5.2%		

¹ Increase.

The percentage of decrease in receipts on this route is smaller than on any route in the company's system showing any decrease.

In our opinion, the small decrease shown does not justify reducing this service by half after 7:15 P. M.

The schedules on this line are very slow, forty minutes being consumed in the Decatur run. In reality they ought to be quickened, and the route, otherwise a delightful route, popularized from South Decatur, so as to reduce the loads on North Decatur cars. South Kirkwood and the Poplar Springs section are growing rapidly.

The town of Kirkwood and its citizens are spending thousands of dollars in paving streets and sidewalks, and new people are constantly moving to the place. Such successful efforts to build up communities, bringing additional traffic, should not be discouraged with a reduction of street car facilities on the route showing the smallest percentage of decreased revenues of any of the company's lines.

The traffic beyond East Lake Junction, affected by the proposed transfer after 7:15, it is true is very light, as shown by observations; yet the Commission cannot escape the view that these people between East Lake Junction and East Decatur, a distance of 2 miles or more, are entitled to reasonably convenient and comfortable facilities so long as the company professes to serve them.

The Commission feels constrained to give weight to these considerations, and to deny the petition for the discontinuance of the operation of South Decatur cars after 7:15 P. M.

Route No. 20—East Point—Hapeville—College Park.

There is now being operated along this route a regular all-day service at twenty-minute intervals to College Park, and at twenty-minute intervals to Hapeville, affording regular all-day service at ten-minute intervals between the city and the junction of the College Park and Hapeville branches at the under-pass, about $\frac{1}{2}$ mile beyond East Point. In addition to this regular all-day service at ten-minute intervals to East Point, twenty-minute intervals to Hapeville and twenty-minute intervals to College Park, sufficient extra or tripper cars are operated to furnish, with the regular cars, during the morning and afternoon rush hours, service to East Point at five-minute intervals, to Hapeville at ten-minute intervals, and to College Park at ten-minute intervals.

It is not desired to make any changes in the above mentioned service.

In addition, however, to this service, there are now being operated over that portion of the line between Virginia avenue in College Park and the center of the city, during the morning and afternoon rush hours, other extra or tripper cars, at intervals of fifteen minutes.

It is desired to discontinue this last-mentioned extra car.

Data as to earnings and traffic on the entire route show as follows:

	December	November	October	September
1913	\$18,284.85	\$17,245.35	\$17,518.30	\$17,467.70
1914	14,864.05	14,201.70	15,746.38	15,877.35
Decrease	\$3,420.80	\$3,072.65	\$1,771.95	\$1,590.35
Decrease in Cash Fares	68,416	61,453	35,439	31,807
Daily Average	2,207	2,048	1,143	1,060
Percentage of Decrease	18.7%	17.8%		

The Virginia avenue extra desired to be discontinued seats 28 passengers. The remaining cars operated on this route are of different sizes, seating 40, 48, and 52 passengers.

Counts of actual loads on two days at the probable peak point show that, with the four schedules per hour by the Virginia avenue extra car discontinued, average load per car for the remaining cars operated would have been as follows:

At corner Gordon and Lee streets:

	Going South	Going North
On December 31st:—		
During 1st hour, A. M.	6	32
“ 2d “ “	12	52
“ 3d “ “	12	41
“ 1st “ P. M.	46	25
“ 2d “ “	58	14
“ 3d “ “	37	18
On January 8th:—		
During 1st hour, A. M.	16	22
“ 2d “ “	13	49
“ 3d “ “	16	57
“ 1st “ P. M.	46	16
“ 2d “ “	69	11
“ 3d “ “	37	18

The foregoing counts showed fairly full average loads during rush hours at the peak point on this route, but the comparatively

heavy decrease in the entire traffic has caused us to have other observations made at different points, in order that we might ascertain more clearly over which branch of the route patronage had decreased, and also to what extent the Virginia avenue tripper was used. These counts were made, at the Hapeville Junction, of each Hapeville and College Park car, including the Virginia avenue tripper, and of all three at Plow Boy Station, just this side of East Point.

These counts we have compared with the counts made at the corner of Gordon and Lee streets. All of these counts show comparatively small use of the special Virginia avenue tripper. When it is remembered that it is not a suburban car, but a small, single track 28-seat car, its unpopularity does not cause surprise.

The average loads at the peak point, on the other cars, considering that some of them seat 48 and 52, are, as stated, fairly full; but on the whole we are of the opinion that if the Company can substitute 48-seat cars for the 40-seat cars now operated during rush hours, the traffic will be more comfortably cared for than by the continued use of the 28-seat Virginia avenue special.

When this is done, the company can discontinue the small tripper car now operated to Virginia avenue.

Route No. 21—Stewart Avenue.

There is now being operated over this route regular all-day service at fifteen-minute intervals, and night service at twenty-minute intervals, and, in addition to this regular service, sufficient extra or tripper cars to furnish, with the regular cars, service at ten-minute intervals during the morning and afternoon rush hours.

Data as to earnings and traffic for four months show as follows:

	December	November	October	September
1913	\$4,118.85	\$3,891.00	\$3,841.25	\$3,727.45
1914	3,630.80	3,365.40	3,666.35	3,756.70
Decrease	\$487.35	\$525.60	\$174.90	\$29.25 ¹
Decrease in Cash Fares ..	9,747	10,512	3,498	585 ¹
Daily Average	314	350	112	19 ¹
Percentage of Decrease ..	11.8%	13.5%		

¹ Increase.

Counts of actual loads at the probable peak point show that,

with the extra tripper car discontinued, the average load per car for the regular cars would have been as follows:

	Going South	Going North
On January 5th:—		
During 1st hour, A. M.	2	29
“ 2d “ “	5	44
“ 3d “ “	10	42
“ 1st “ P. M.	47	10
“ 2d “ “	53	7
“ 3d “ “	20	3
On January 7th:—		
During 1st hour, A. M.	2	30
“ 2d “ “	7	45
“ 3d “ “	7	44
“ 1st “ P. M.	30	13
“ 2d “ “	61	19
“ 3d “ “	38	2

Cars on this route seat 40.

Careful consideration of the detailed traffic figures for this route convince us that it would be a hardship on the patrons of this line to discontinue the extra car now being operated during the afternoon rush hours, as there seems to be a period of an hour or more in length when there is a larger traffic than the regular all-day service can comfortably handle. There does not seem to be so much congestion during the morning, and we are of the opinion that this traffic can be comfortably handled by the regular cars.

The petition of the company to discontinue the extra cars now operated during the morning rush hour period is granted, and denied as to the afternoon rush hour period.

Route No. 22—Soldiers Home Line.

There is now operated on this route during the entire day regular service at twenty-minute intervals, until 8 P. M., after which the regular service is at thirty-minute intervals.

In addition, sufficient extra or tripper cars to furnish, with the regular cars, during the morning and afternoon rush hours, service at fifteen-minute intervals.

It is desired to discontinue these extra, or tripper, cars.

Data as to earnings and traffic on this route for four months show as follows:

	December	November	October	September
1913	\$3,853.05	\$3,614.55	\$3,765.40	\$3,707.15
1914	3,088.10	2,895.90	3,383.20	3,529.85
Decrease	\$764.95	\$718.65	\$382.20	\$177.30
Decrease in Cash Fares ..	15,299	14,373	7,644	3,546
Daily Average	493	479	246	118
Percentage of Decrease ..	19.8%	19.9%		

Cars on this route seat 40 passengers.

Two counts of actual loads on two days at the probable peak point show that, with the extra or tripper cars discontinued, the remaining cars would have carried average load per car as follows:

At Decatur and Grant streets:

	Going East	Going West
On December 31st:—		
During 1st hour, A. M.	1	15
“ 2d “ “	12	44
“ 3d “ “	7	39
“ 4th “ “	8	18
“ 1st “ P. M.	41	20
“ 2d “ “	59	13
“ 3d “ “	44	11
“ 4th “ “	20	17
On January 5th:—		
During 1st hour, A. M.	3	30
“ 2d “ “	12	54
“ 3d “ “	13	46
“ 4th “ “	8	22
“ 1st “ P. M.	40	17
“ 2d “ “	58	9
“ 3d “ “	46	8
“ 4th “ “	21	3

While the traffic on this route is comparatively small, and the percentage of decrease in receipts, small in dollars, therefore apparently large, we are of the opinion that such falling off as there has been in traffic must have been fairly spread over the entire day. The counts as to traffic show that during a good proportion of the rush hour periods there is more traffic than can be handled without overloading, should the extra cars be discontinued.

We are inclined to the opinion that the rush hour period might be shortened so as to cover about two hours during the heaviest morning and afternoon congestion.

The Commission will issue an order in accordance with conclusions announced in the foregoing. It will further direct that

the company file with the Commission, beginning with the month of January, until further order of the Commission, monthly statements of its gross passenger receipts on each route and for the entire system. Like statements for the corresponding months of 1914 shall be also filed.

Should it appear to the Commission from a study of these statements as filed, that present conditions as to the company's traffic or services have materially changed, so that further reductions in service should be allowed, or services temporarily discontinued should be restored, the Commission will pass the appropriate order after due notice to all concerned.

A statement of gross passenger receipts of the company for twenty days of January, the latest date practicable at this time, shows a decrease as compared with the first twenty days of January, 1914 of \$12,815.45, or 8.8 per cent, as compared with a decrease of 2.6 per cent in December, and 9.7 per cent in November, 1914, under the corresponding months of 1913, so that the Commission is hopeful that traffic will continue to improve.

ORDER.

Upon consideration of the record in the above-entitled matter, and of the evidence and arguments submitted at the hearing in this case had on January 13th, 1915, and of report and opinion prepared by the Chairman of the Commission touching the various prayers of the petitioner, a copy of which said report and opinion is attached to this order, the conclusions announced therein are hereby adopted by the Commission, and it is—

Ordered, that the prayer of the petitioner for authority to revise service on Route No. 1, Marietta and Decatur streets, be, and the same is hereby, granted; and the Georgia Railway & Power Company is hereby authorized to establish and maintain service at fifteen-minute intervals on this route from terminus to terminus.

Ordered further, that the prayer of the petitioner with respect to changes in service on Route No. 4, Inman Park to Grant Park, be, and the same is hereby, denied.

Ordered further, that the prayer of the petitioner with respect to changes in service on Route No. 6, Capitol avenue and Forrest avenue, be, and the same is hereby, denied.

Ordered further, that the prayer of the petitioner for authority to discontinue extra cars now being operated during the morning rush hours on the northern or Luckie street end of Route No. 7, Luckie and East Hunter streets, be and the same is hereby granted, and said Georgia Railway & Power Company is hereby authorized to discontinue operation of said extra cars during the morning rush hours on the northern end of this route; and that the prayer of the petitioner for authority to discontinue extra cars now being operated during the afternoon rush hours on the northern end of this route be, and the same is hereby, denied.

Ordered further, that the prayer of the petitioner with respect to changes in service on Route No. 8, Inman Yards—White City, be and the same is hereby denied.

Ordered further, that the prayer of the petitioner with respect to changes in service on Route No. 11, Courtland and Washington streets, be and the same is hereby denied.

Ordered further, that the prayer of the petitioner with respect to changes in service on Route No. 12, Cooper street—English avenue, be, and the same is hereby, denied, with the provision that the company may, if it desires, change the morning rush hour period on this route to extend from 5:30 A. M. to 7:30 A. M., instead of from 5:00 A. M. to 7:45 A. M., as at present.

Ordered further, that the prayer of the petitioner for authority to revise service on Route No. 13, Irwin and McDaniel streets, be, and the same is hereby, granted, and the said Georgia Railway & Power Company is hereby authorized to discontinue extra cars now being operated on this route during the morning and afternoon rush hours.

Ordered further, that the prayer of the petitioner with respect to changes in service on Route No. 15, Piedmont avenue—Central avenue, be and the same is hereby denied, and the said Georgia Railway & Power Company is hereby directed, beginning April 1st next, to extend the extra rush hour service now being operated on the northern end of this route to operate at five-minute intervals to the terminus of the line, continuing in effect the regular all-day service now being operated at ten-minute intervals.

Ordered further, that the prayer of the petitioner with respect

to changes in service on Route No. 17, Main Decatur line, be, and the same is hereby, denied.

Ordered further, that the prayer of the petitioner with respect to changes in service on Route No. 18, South Decatur line, be, and the same is hereby, denied.

Ordered further, that the prayer of the petitioner for authority to revise service on Route No. 20, East Point—Hapeville—College Park, be and the same is hereby granted conditionally, as hereinafter set out, and said Georgia Railway & Power Company is hereby authorized to discontinue extra cars now being operated during the morning and afternoon rush hours over that portion of this route between Virginia avenue, in College Park, and the center of the city, provided said company substitutes 48-seat cars for the 40-seat cars now being operated during rush hours on this route between the center of the city and College Park.

Ordered further, that the prayer of the petitioner for authority to discontinue extra cars now being operated during the morning rush hours on Route No. 21, Stewart avenue, be, and the same is hereby, granted; and said Georgia Railway & Power Company is hereby authorized to discontinue operation of said extra cars on this route during the morning rush hours; and that the prayer of the petitioner for authority to discontinue extra cars now being operated during the afternoon rush hours on this route, be and the same is hereby, denied.

Ordered further, that the prayer of the petitioner with respect to changes in service on Route No. 22, Soldiers Home line, be, and the same is hereby, denied, with the provision that the company may, if it desires, shorten the rush hour period on this route so as to cover only about two hours during the heaviest morning and afternoon congestion.

Ordered further, that the Georgia Railway & Power Company, be, and is hereby, directed to file with the Commission, beginning with the month of January, and until the further order of the Commission, monthly statements of gross passenger receipts on each route separately, and for the entire system, and like statements for the corresponding months of the year 1914, these statements to be filed with the Commission as promptly as possible after the figures for the same are available.

By order of the Commission, C. M. Candler, Chairman.

ILLINOIS PUBLIC UTILITIES COMMISSION.

IN RE BLUFFS & WINCHESTER TELEPHONE COMPANY.

[No. 3411.]

Rates — Increase — Discrimination — Subscribers' equipment.

A telephone company was authorized to increase certain rates in order to eliminate discrimination in favor of subscribers owning their own instruments.

Rates — Telephone — Reduction to owners of instruments.

It is unlawful for a telephone company to grant any reduction from the regular rate on account of subscribers owning their own instruments. (Conference Ruling No. 15, Illinois Public Utilities Commission.

Equipment — Telephone — Purchase or rental of owner's equipment.

A telephone company may purchase or rent telephones owned by subscribers.

Equipment — Telephone — Furnishing telephone instruments.

A telephone company must furnish telephone instruments whenever it becomes necessary to replace telephones owned by subscribers, or to make new installations.

[February 19, 1915.]

APPLICATION for authority to increase telephone rates: granted.

By the **Commission**: This is an application for authority to discontinue discriminatory rates and charges. Application sets forth that the petitioner is a public utility engaged in the management and operation of a rural telephone system in Scott county, Illinois, with its principal place of business at Winchester, and that as such public utility it is subject to the provisions of an act entitled, "An Act to Provide for the Regulation of Public Utilities."

Application further sets forth that the rates of the petitioner now in force and effect are as follows:

Rented telephones	\$12.00 per year
Telephones furnished by the subscribers	10.00 " "
Each extra call bell	2.50 " "

Application is made for authority to change the rates charged subscribers who own their telephones, and to change the regular schedule rate of \$12.00 per year to all subscribers without discrimination.

"In the matter of rates and charges applicable to subscribers

who own their telephones," conference ruling No. 15, and in other decisions heretofore made, the Commission held that it is unlawful to grant any reduction from the regular rate on account of subscribers owning their telephones. The company may purchase or rent telephones now in use by subscribers, but no subscriber shall be allowed a lower rate on account of his owning the telephone. The company shall furnish telephones whenever it becomes necessary to replace telephones now owned by subscribers, and in all new installations the company shall furnish all instruments.

"It is therefore ordered that the rate charged subscribers who own their telephones, as set forth in the application of the petitioner, Bluffs & Winchester Telephone Company, shall be discontinued, and the regular schedule rate of \$12 per year, shall be charged all subscribers without discrimination.

"It is further ordered that such charge in rates shall become effective as of March 1, 1915, and the regular schedule rate shall be filed, posted, and published by said petitioner as provided by § 34 of an act entitled, "An Act to Provide for the Regulation of Public Utilities."

By order of the Commission this 19th day of February, 1915.

Note.—Upon a similar state of facts the Commission authorized L. M. Morris, doing business as the Deer Creek Telephone Exchange, to change certain rates in order to eliminate discrimination in favor of subscribers owning their own instruments. (See *Re Morris*, Case No. 3394, February 19, 1915.)

To the same effect see also:

Re Harriston Teleph. Co., Case No. 3470, March 4, 1915; *Re Central Illinois Independent Teleph. Co.*, Case No. 3386, March 4, 1915; *Re Orion Teleph. Exch. Asso.*, Case No. 3430, March 4, 1915; *Re White County Teleph. Union*, Case No. 3507, March 4, 1915; *Re Washburn Teleph. Co.*, Case No. 3505, March 4, 1915; *Re Albany Teleph. Co.*, Case No. 3465, March 4, 1915; *Re Varna Teleph. Co.*, Case No. 3429, March 4, 1915; *Re Egyptian Mutual Teleph. Co.*, Case No. 3446, March 4, 1915; *Re Harrisburg Independent Teleph. Co.*, Case No. 3369, March 4, 1915; *Re Mt. Sterling Teleph. Co.*, Case No. 3102, February 19, 1915; *Re Dawson Twp. Mut. Teleph. Co.*, Case No. 3404, February 19, 1915; *Re Smithville Teleph. Co.*, Case No. 3401, February 19, 1915; *Re Gerrish Teleph. Line*, Case No. 3389, February 19, 1915; *Re Tri-County Teleph. Co.*, Case No. 2731, January 21, 1915 (ante, 129).

INDIANA PUBLIC SERVICE COMMISSION.

IN RE LAFAYETTE TELEPHONE COMPANY.

[No. 1042.]

Rule — Telephone — Term of contract.

The rule of a telephone company that a patron in first subscribing for service must contract for such service for one year, after which the contract shall be self-renewing for consecutive terms of three months each, terminable at the end of any such term upon thirty days' previous written notice from either party, was approved.

Rule — Telephone — Payment in advance.

The rule of a telephone company that payments for service for the first three months must be made in advance, and thereafter quarterly or monthly in advance, at the option of the subscriber, was approved.

Rule — Telephone — Change of location — Rate.

The rule of a telephone company that a charge of \$2 shall be made for furnishing service at each and every location other than the one designated in the annual contract was approved.

Rule — Telephone — Free change of location.

The rule of a telephone company that after the expiration of the annual contract for service, a change of location will be made without charge upon the signing of a new annual contract, was approved.

Rule — Telephone — Damage to facilities.

The rule of a telephone company that if the telephone instrument or its connections are maliciously or purposely injured the subscriber must pay for the damage was approved.

Rule — Telephone — Monthly payments — Discontinuance of service.

The rule of a telephone company that, if monthly advance payments are not made on or before the 15th of each month, telephone service shall be discontinued, was approved.

Rule — Telephone — Quarterly payments — Discontinuance of service.

The rule of a telephone company that, upon failure to make advance quarterly payments by the 15th day of the first month of each quarter, service shall be discontinued, was approved.

Rule — Telephone — Disconnection charge.

The rule of a telephone company that a disconnection and reconnection charge of 50 cents shall be made against all subscribers within the municipal area whose service is discontinued for failure to make prompt payment in advance, was approved.

Rule — Telephone — Disconnection charge.

The rule of a telephone company that a disconnection and reconnection charge of \$2 shall be made against all subscribers outside of the municipal area whose service is discontinued for failure to make prompt payment in advance, was approved.

Rule — Telephone — Use of telephone.

The rule of a telephone company that telephone instruments are to

be used only by the subscriber, his tenants, and employees, when engaged in the subscriber's business only, was approved.

Rule — Telephone — Use of telephone.

The rule of a telephone company that telephone instruments are not to be used for receiving, transmitting, or delivering any message or communication in respect to which a consideration has been or is to be paid to any party other than the telephone company, except as permitted by its rules, was approved.

Rule — Telephone — Removal of instruments.

The rule of a telephone company that telephone instruments are not to be removed from subscriber's premises by anyone except a representative of the company, was approved.

Rule — Telephone — Foreign attachments.

The rule of a telephone company that telephone instruments are not to be connected with any instrument or apparatus not furnished by such company, was approved.

Rule — Telephone — Prefix and number.

The rule of a telephone company that the prefix and number assigned to a subscriber's telephone are no part of the contract with the company, and may be changed by the company at any time as the exigencies of the business may require, was approved.

Rule — Telephone — Inspection of facilities.

The rule of a telephone company that its representative shall have authority at any proper time to enter upon the subscriber's premises for the purpose of doing necessary work upon the telephone instrument and its connections, was approved.

Rule — Telephone — Errors in directory.

The rule of a telephone company that it shall in no case be liable for damages accruing from errors or omissions in the compilation or printing of its directory was approved.

Rule — Telephone — Delinquent accounts.

The rule of a telephone company that no person who has a delinquent account will be accepted as a subscriber until such account is paid, was approved.

[February 5, 1915.]

APPROVAL of rules and regulations governing a telephone business.

By the Commission: On the 9th day of October, 1914, the Lafayette Telephone Company applied to the Public Service Commission of Indiana by petition, asking for authority to put into effect certain rules and regulations, setting forth in said petition that at the time it filed its schedule of rates, tolls, and charges for its telephone service, but at that time and until recently, it did not understand and know that the law required the filing of rules and regulations governing its business, and there-

fore, on account of such misunderstanding, it failed to file its rules regulating its business. The Lafayette Telephone Company asks for authority to establish and put into effect the following rules and regulations:

"1. A portion of the company in first subscribing for its service must contract for such service for one year, after which the contract shall be self-renewing for consecutive terms of three months each, the contract to be terminated at the end of any term for which the same shall be in force by thirty days' previous written notice from either party to the other.

"2. Payments for services for the first three months must be paid in advance, after which such service may be paid quarterly in advance or monthly in advance at the option of the subscriber. All payments to be made at the office of the company.

"3. Applicants for telephone service at a designated location shall contract for service for one year. Should service be desired at any other location not designated in contract during such year, a charge of \$2 will be made for each and every new location. After the expiration of such contract a change of location for service may be made without charge by subscriber signing a new contract for another year upon the same conditions as above set forth.

"4. If the telephone instrument or its connections are maliciously or purposely injured, the subscriber must pay for the damage done to such instrument or its connections.

"5. A patron who pays monthly shall pay at the office of the company on or before the first day of the month for which the service is to be rendered. If such payment is not made on or before the fifteenth of such month his telephone service shall be discontinued.

"A patron who pays quarterly shall pay at the office of the company his quarterly rental on or before the first day of the first month of the quarter for which the service is to be rendered. On failure to pay by the fifteenth of such month his service shall be discontinued.

"Against all subscribers who fail to pay as above provided, a charge of 50 cents shall be made and collected for disconnecting and reconnecting the service, except where the subscriber resides outside of Lafayette or West Lafayette, in which case the charge for disconnecting and reconnecting the service will be \$2.

"6. The telephone instruments provided by the company are a part of the exchange system, subject to the rules of the company, and are to be used only by the subscriber, his tenants, or employees when engaged in the subscriber's business only, and not to be used for receiving, transmitting, or delivering any message or communication in respect to which a consideration has been or is to be paid to any party other than said company, except as may be permitted by the rules of the company. Said instruments are not to be removed from said premises by anyone except the representative of the company, or connected with any instrument or apparatus not furnished by the company.

"7. The prefix and number assigned to a subscriber's telephone are no part of the contract with said company, and may be changed by said company at any time as the exigencies of the business may require.

"8. A representative of the company shall have the authority at any proper time to enter upon the premises of the subscriber for the purpose of doing all the necessary work in relation to the instrument and its connections.

"9. The company shall in no case be liable for damages accruing from errors or omissions in the compilation or printing of its directory.

"10. Any person who has a delinquent account with the company is not accepted as a subscriber until such delinquent account is paid."

The Public Service Commission of Indiana, being fully advised in the premises, finds that said rules regulating the business of the Lafayette Telephone Company are reasonable rules, and should be and are hereby approved.

IOWA RAILROAD COMMISSION.

GRINNELL ELECTRIC & HEATING COMPANY

v.

CITIZENS OF POWESHIEK & JASPER COUNTIES.

[Docket E-145.]

Franchise — New grant — Electric transmission line.

A franchise for the period of twenty-five years was granted to the

Grinnell Electric & Heating Company to build and operate an electric transmission line between Grinnell, Poweshiek county, and Kellogg, Jasper county, Iowa, such line to be constructed in accordance with approved standards and in compliance with the Iowa statutes.

[February 27, 1915.]

APPLICATION for franchise to build, construct, reconstruct, equip, and operate a proposed transmission line for the purpose of conducting electricity for light, power, and heating purposes; granted.

By the **Commission**: This is an application of the Grinnell Electric & Heating Company, for a franchise to build, construct, reconstruct, equip, maintain, and operate a proposed transmission line for the purpose of conducting electricity for light, power, and heating purposes along and upon the roads and highways hereinafter more particularly described, between Grinnell, Poweshiek county, Iowa, and Kellogg, Jasper county, Iowa. The case came on for hearing in the office of the Board of Railroad Commissioners, Des Moines, Iowa, at 2 p. m., on the 8th of December, 1914, pursuant to notice ordered published in the official newspaper of Poweshiek and Jasper counties respectively, as by law provided, and after an inspection of the notice of said hearing and proofs of publication thereof.

The Board finds: That notice of the time and place of said hearing, as prescribed by law, was published more than ten days prior to the 8th day of December, 1914, in the Brooklyn Chronicle, the Poweshiek County Palladium, the Montezuma Republican, the Grinnell Herald, and the Grinnell Register, being official newspapers of Poweshiek county; and in the Newton Daily News, the Newton Record, and the Colfax Clipper, being official newspapers of Jasper county, Iowa.

That Rayburn & Lyman appeared as attorneys for the said applicant, and that no objections have been filed by the citizens of either county.

That the said company by its president, Lindsey Hooper, did file its consent on December 8, 1914, that the provisions of chapter 174 of the Thirty-fifth general assembly, and of all laws or acts relating to public utilities, or to the regulation, supervision, or control thereof, which are now in force or which may be hereafter enacted, shall apply to its existing line or lines with the

same force and effect as though said line or lines had been constructed under the permit provided for in § 1 of said act.

The Board further finds that said applicant is engaged in the manufacture, sale, and distribution for sale, of electric current for lighting and heating purposes, and owns and operates power plants for the generation of electricity and for the carrying on of its business in Poweshiek and Jasper counties, Iowa, and that the location of the proposed transmission line lies wholly within said counties.

That it is to the interest and for the benefit of the public, as well as the applicant, that it be authorized to construct, equip, reconstruct, maintain, and operate a transmission line over, along, and across the roads and public highways of the state in Poweshiek and Jasper counties; that the said transmission line will be constructed wholly along, upon, and across the said roads and public highways; and that the starting point, route, and terminus of said proposed transmission line required by the applicant, in order to build, construct, equip, reconstruct, maintain, and operate the same, are described as follows, to wit:

[Here follows the description of the new location.]

It is therefore ordered that the said Grinnell Electric & Heating Company, its successors, or assigns, is hereby granted the right for the period of twenty-five years, unless sooner terminated or modified by act of legislature or other lawful method, to build, construct, reconstruct, use, equip, maintain, and operate the above transmission line for the purpose of distributing electrical current for light, power, and heating purposes, across, along, and upon the roads and highways herein above described, and across and over the roads and highways intersecting or embracing any portion of said described course and route of said transmission line as herein above described as fully and completely as may be conferred by this Board under and by virtue of chapter 174, Acts of the Thirty-fifth General Assembly of Iowa, authorizing this Board to grant franchise for the construction of electric transmission lines for the purposes herein set out; provided, however, that the said transmission lines shall be so constructed and maintained as not to interfere with the use by the public of the roads and highways of the state; and provided, further, that the said transmission line be constructed and maintained by the Grin-

nell Electric & Heating Company according to the specifications attached to their application or hereafter made by the Board of Railroad Commissioners of the state of Iowa.

It is further provided that all of the material used in said transmission line shall be of good quality and the workmanship first-class and in accordance with the approved standards, and the construction of said line shall also fully comply with the act of the Thirty-fifth General Assembly of Iowa, authorizing the granting of the franchise herein permitted, entitled:

"An Act to Confer Power upon the Railroad Commission of the State of Iowa to grant a Franchise to Any Individual or Corporation Organized under the Laws of Iowa, or Corporation Authorized to Transact Business in Iowa under the General Incorporation Laws of the State Engaged in the Manufacture, Sale or Distribution for Sale of Electric Current to Construct Transmission Lines and Obtain the Necessary Interests in Real Estate Therefore, and the Manner of Making Compensation to said Owner of Said Lands for Said Rights." [Laws 1913, c. 196].

Note.—In *Central Iowa Light & P. Co. v. Webster County, Iowa*, Docket E-151, February 27, 1915, a franchise for the period of twenty-five years was also granted to the Central Iowa Light & Power Company to build and operate an electric transmission line between certain points on the Evanston Highway, Webster county, Iowa, and over certain private property, together with the right of eminent domain where necessary to acquire said right of way.

In *Monona Light & P. Co. v. Clayton County, Iowa*, Docket E-148, February 27, 1915, a franchise for the period of twenty-five years was granted to the Monona Light and Power Company to build and operate an electric transmission line between Monona and Luana, both in Clayton county, Iowa.

In *Cedar Valley Power Co. v. Floyd County, Iowa*, Docket E-142, February 27, 1915, a franchise for the period of twenty-five years was granted to the Cedar Valley Power Company to build and operate an electric transmission line between Charles City and Floyd, both in Floyd county, Iowa.

NEW JERSEY PUBLIC UTILITY COMMISSION.

IN RE COMPLAINT OF THE BOROUGH OF GLEN ROCK
ET AL.

v.

BERGEN AQUEDUCT COMPANY.

Franchises — Validity — Grant to de facto corporation.

An ordinance will not be held invalid on the ground that it was granted to an illegally incorporated company, where the company itself is asserting the illegality of its own incorporation to escape certain of its obligations under the ordinance.

Franchises — Aqueduct company — Requirement to extend mains — Enforceable, although unprofitable.

An aqueduct company, operating within a borough under an ordinance which obligates it to make extensions of its mains whenever certain guaranties are furnished it, cannot escape such obligation on the ground that an option to purchase its property given to another borough may be exercised within so short a time as to render the extensions unprofitable to it, particularly where it appears that the option was given prior to its obtaining passage of the ordinance in question.

Franchises — Aqueduct company — Requirement of written acceptance — Waiver of.

The requirement of written acceptance within thirty days of its passage, contained in an ordinance granted to an aqueduct company to operate within a borough, is waived where both the borough and the company have acted upon the ordinance for over ten years.

Franchises — Aqueduct company — Requirement to extend mains — Inability to sell securities.

The contention of an aqueduct company that it will not be able to sell securities for the purpose of raising funds for the making of extensions to its mains, required of it under an ordinance, will not be considered where it is not shown that the company is unable to make the extensions from its funds on hand or other sources.

Commissions — Jurisdiction — Corporation operating as a utility under a franchise.

The public utility act, including the section which confers on the Commission the power to require a public utility to comply with the laws of the state and any municipal ordinance realting thereto, and to conform to the duties imposed upon it thereby, is designed to apply to any corporation operating as a utility under a franchise.

[February 23, 1915.]

COMPLAINT to compel aqueduct company to extend its mains in compliance with franchise ordinance; order requiring extensions granted.

Appearances: E. A. DeYee for complainants; Collins & Corbin and Frank Bergen for respondent.

By the **Commission**: The Bergen Aqueduct Company was formed in the year 1900 under the general corporation act. The purpose for which the company was organized was to supply water in the township of Ridgewood and elsewhere in Bergen county and other counties. In the year 1903 it made application to the borough of Glen Rock, a municipality adjoining Ridgewood, for an ordinance permitting the extension of its mains into that borough. The ordinance was duly granted. It provides in the 3d section thereof that the company shall, within three months after its passage, lay mains on certain certain streets, and "shall thereafter from time to time extend its mains in tthe streets, highways, and alleys of the borough whenever reliable written guaranty for five years, or a revenue of 10 cents per foot for mains laid, shall be given by the property owners along the line."

Extensions of mains are demanded by certain residents of Harrisontown road in said borough, and the agreement to guarantee the cost of construction as provided for in the ordinance has been tendered to the company. It refuses to make the extension, and attempts to justify such refusal upon the grounds: (1) That the ordinance in question is invalid; and (2) that the Bergen Aqueduct Company under a contract made with the township of Ridgewood in nineteen hundred is obligated to sell its plant and system in that township any time after fifteen years from the date of that contract, upon six months' notice by the township of its intention to purchase the same, and as that township may within the coming year do so, the company may be unable to supply Glen Rock with water for a sufficient length of time to make the extension demanded a profitable one.

Counsel for the company in support of the first ground relies upon the case of State, Richards Prosecutor, v. Dover, 61 N. J. L. 400, 39 Atl. 705. The Board does not think that that case controls the present one. In the Richards Case a *de facto* corporation obtained an ordinance from the city of Dover, granting it the right to construct gas mains through tthe streets of that municipality. Another gaslight company, which was legally or-

ganized, joined with some citizens in certiorari proceedings to review the ordinance, and the court held that the ordinance having been granted to a corporation that was not organized under the gas company act, it was subject to attack by the prosecutors, and was declared invalid. In the present case, however, the illegality of the Bergen Aqueduct incorporation is set up by that company itself. It is not raised by the municipality or citizens or any competing company, but its compliance with the ordinance is in fact demanded by the municipality and certain citizens thereof.

We do not think that the opinion of the supreme court in the Richards Case was intended to be used as a shield by an illegally organized company to protect it from the performance of its contracts with a municipality, entered into by the latter in good faith.

Nor do we think that the fact that it may be obliged, within a short time, to sell its property to the borough of Ridgewood, constitutes a valid reason for its refusal to comply with the provisions of the ordinance of the borough of Glen Rock of nineteen hundred and three. The company, of course, was aware of its contractual obligation towards the township of Ridgewood when it obtained the passage of the ordinance of the borough of Glen Rock.

It is true that the ordinance in question calls for an acceptance by the company in writing within thirty days after its passage. This requirement, however, was, in the opinion of the Board, waived by both the borough and the company by acting upon it for over ten years, during which time the company has made extensions of its mains through the greater part of the borough. Both of the defenses relied upon by the company, in our judgment, are based upon conditions created by its own acts, and it should not be permitted to take advantage of its own default against a bona fide contractee.

It has further been stated by counsel of the company that it will be unable to sell securities which may be required for the proposed extensions. We do not think that that is a matter for decision at this time. There is not sufficient proof of the company's inability to make the extension required from its funds on hand or other sources. The question presented for decision

is whether or not this company shall be required to comply with the ordinance under which it obtained rights from the borough of Glen Rock which it has been enjoying for several years. Among the powers of this Board enumerated under § 17 of chapter 195 of the Laws of 1911 is that of requiring a public utility "to comply with the laws of this state and any municipal ordinance relating thereto, and to conform to the duties imposed upon it thereby." The public utility act is designed to apply to any corporation operating as a utility under a franchise. We are of the opinion that the duty imposed upon this company by the ordinance of 1903 requires it to make the extension of its main through and along Harrisontown road, prayed for in the petition.

An order will enter in accordance with the views herein expressed.

Board of Public Utility Commissioners, by Ralph W. E. Donges, President.

ORDER.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters involved having been had, and the Board having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof, the Board of Public Utility Commissioners —

Hereby orders the Bergen Aqueduct Company to comply with the ordinance of the borough of Glen Rock, passed August 11, 1903, entitled:

"An Ordinance to Provide for the Laying of Pipe by the Bergen Aqueduct Company, for the Conveyance of Water for Public and Private Use in the Streets, Highways, and Lanes, of the Borough of Glen Rock;"

And to conform to the duties imposed upon it thereby, and to make such extensions as are requested by S. Elizabeth Robinson, Phillip C. Wadsworth, Catharine A. Wadsworth, and Hannah W. Robinson, and to install a fire hydrant in front of the property of Phillip C. Wadsworth and Catharine A. Wadsworth, upon the parties named above, and the borough of Glen Rock complying with the conditions prescribed in the ordinance mentioned here-

in, which relate to extensions of the distribution system of the company, and the installation of fire hydrants, which installation and extensions the Board hereby finds are requisite to the furnishing of adequate and proper service by said company.

This order shall become effective March 20, 1915.

Board of Public Utility Commissioners, by Ralph W. E. Donges, President.

PENNSYLVANIA PUBLIC SERVICE COMMISSION.

NORWICH TELEPHONE COMPANY

v.

BELL TELEPHONE COMPANY OF PENNSYLVANIA.

[Complaint Docket No. 283.]

Intercompany relations — Telephone — Joint service contracts — Discrimination.

A contract between two telephone companies providing for joint exchange and toll service upon payment of \$5 per year per subscriber by complainant company, without any allowance for its services in collecting and paying over toll charges for messages originating on its lines, was not held to be unreasonable or discriminatory merely because similar contracts existed with other telephone companies providing for the payment of \$3 per year per subscriber with a 15 per cent allowance on all toll charges collected on their lines, where it appeared that such contracts were to expire within a year, and that upon expiration were to be superseded by contracts similar in terms and conditions to the contract complained of.

Intercompany relations — Telephone — Extra charge to nonsubscribers for collection of tolls.

A complainant telephone company having a monopoly of the telephone service in a certain locality was authorized to publish proper and reasonable tariffs to cover the expense of collecting from nonsubscribers toll charges originating on its lines, it appearing that such nonsubscriber toll business formed a large part of the toll business originating on complainant's lines, and that complainant was under a collection expense approximating 15 per cent of the amounts collected for toll business; it appearing, further, that an allowance to complainant by respondent for the collection of toll charges, different from the published tariffs of respondent, was unwarranted.

Intercompany relations — Telephone — Reports by toll-line company to connecting company.

A telephone company furnishing toll-service connections to complainant, a small telephone company having no exchange, was ordered

to furnish to the latter's subscribers monthly statements showing the amounts due from each subscriber for toll messages, the number of toll messages from each subscriber, and from nonsubscribers, with their names, stations called, date, etc., and to furnish to the agent of complainant a duplicate copy of each of such statements with a sheet having a detailed summary thereof, in order to lessen the expense and time of such agent in the collection of toll charges for messages originating on complainant's lines, it appearing that complainant was under considerable expense in classifying and dividing toll charges among its subscribers and rendering statements to them, and that an allowance to complainant by respondent for the collection of toll charges or for other services to subscribers, different from respondent's published tariffs, was unwarranted.

[February 4, 1915.]

COMPLAINT as to terms and conditions of a contract between two telephone companies for joint exchange and toll service; dismissed.

REPORT OF THE COMMISSION.

Tone, Commissioner: The complaint of the Norwich Telephone Company against the Bell Telephone Company of Pennsylvania alleges that the Bell Company has compelled the complainant to enter into a new contract for joint exchange and toll services, rates, and charges, under terms differing materially from those of a former contract between the parties which was terminated September 1, 1914; and that the Bell Company grants to other telephone companies exchange services similar to that furnished the complainant, at more favorable rates and terms to such other companies than to the complainant.

The answer of the respondent states that the new contract with the complainant provides for the same rates and charges for exchange and toll services for the complainant as are set forth in the published tariffs of the respondent; and the same as are in effect with all other telephone companies for like service, except that the respondent has in existence several contracts, each for a specified number of years, the terms of which do not conform to its published tariffs, and that each such contract, as it expires, is being superseded by a new contract under terms and conditions conforming to the published tariffs of the respondent.

The Norwich Telephone Company furnishes telephone service to forty-nine subscribers located in Norwich and throughout

several miles of territory surrounding said town, which is 12 miles from Smethport, McKean county. Its subscribers are connected directly to the telephone exchange of the Bell Company at Smethport and are given free service to the three hundred subscribers of the latter company in Smethport. The Norwich Telephone Company has no telephone exchange. All central station service is performed for it at Smethport by the Bell Company.

The Norwich Telephone Company charges its party-line subscribers \$14 per year and its one individual-line subscriber \$18 per year, out of which amounts payment is made by the Norwich Company of \$5 per year per subscriber to the Bell Company for its central station services, for free service to the latter company's Smethport subscribers, for telephone directories, and for connections for toll services when desired. The Norwich Company guarantees, collects, and pays monthly to the Bell Company all toll charges for messages originating on the lines of the Norwich Company.

Under the former contract the Bell Company furnished the said central station or exchange service, etc., to the Norwich Company for \$3 per year per subscriber; and, to cover the cost of collection, allowed the Norwich Company 15 per cent of all charges collected by it for toll messages originating on the lines of the Norwich Company. By the terms of the new contract, the Norwich Company pays to the Bell Company \$5 per year per subscriber, and does not receive any allowance for its services in guarantying and collecting the toll charges.

The Bell Company has at present two contracts,—one with the Orange Telephone Company and one with the Marvin Creek Telephone Company,—each connected to its Smethport Exchange, having the same terms and conditions as the original contract of the Norwich Telephone Company. The evidence was that these two contracts expire during the year 1915, and that upon termination they are to be superseded by contracts similar in terms and conditions to the new contract with the Norwich Company.

At the hearing, the representatives of the Norwich Company admitted that the charge of \$5 per year per subscriber was reasonable, if it be allowed 15 per cent for collecting toll charges; and submitted evidence showing that there was a large amount of toll business originating on the complainant's lines from the

use of its phones by many nonsubscribers, as well as subscribers, that the complainant was under a considerable expense in collecting for such toll messages, that said expense amounted to about 15 per cent of the amounts collected for the tolls; and the complainant maintains that it is unreasonable and unfair to require it to collect all toll charges without compensation therefor, in view of the fact that, there being no other telephone service in the district, a large proportion of the toll business originates from nonsubscribers who with the Bell Company receive all the advantages and benefits of such service over the complainant's lines, and that such nonsubscriber toll service is of no benefit to the complainant nor its subscribers, being instead a disadvantage to the extent that such business occupies or loads its subscribers' lines and interferes with the subscribers' use of its lines. The complainant presented evidence showing that it was under considerable expense after receipt from the Bell Company of the monthly memoranda of toll charges, in classifying and dividing said charges among and rendering statements to its subscribers.

The respondent "was inclined to admit the collecting is worth 15 per cent," but maintained that it could not render toll service at its published rates less 15 per cent for collection, and that such an allowance could not properly be made to the complainant without a violation of its published tariffs, and without producing a discrimination against many other connecting telephone companies with which it has existing contracts in accord with its tariffs, and from which companies no complaints have ever been received.

If, as the complainant maintains, much of the toll business results from the use of its phones by nonsubscribers, the cost to it of collecting such tolls can be provided for, by its publishing proper and reasonable tariffs for furnishing such service to nonsubscribers.

The Commission is of the opinion that the evidence submitted does not warrant granting to the complainant a rate for subscribers' exchange service, etc., and an allowance for the collection of toll charges, different from the published tariffs of the respondent; but directs that, in order to lessen the expense and time of the agent or representative of the Complainant Company in the collection of toll charges, the respondent furnish to each subscriber of the complainant monthly statements showing the

amounts due from such subscriber for toll messages, with information as to the number of toll messages from said subscriber, and from nonsubscribers, with their names, station called, date, etc.; and furnish to the agent or representative of the complainant a duplicate copy of each of such statements, with a sheet having a detailed summary thereof.

S. L. Tone, Commissioner.

ORDER

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed of record a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

Now, to wit, February 4, 1915, it is ordered that the Bell Telephone Company of Pennsylvania furnish to each subscriber of the Norwich Telephone Company monthly statements showing the amounts due from such subscriber for toll messages, with information as to the number of toll messages from said subscriber, and from nonsubscribers, with their names, station called, date, etc., and furnish to the agent or representative of the Norwich Telephone Company a duplicate copy of each of such statements together with a statement giving a detailed summary thereof, and that the complaint in this case be, and the same is, hereby dismissed.

By the Commission, Sam'l W. Pennypacker, Chairman.

MONTANA PUBLIC SERVICE COMMISSION.

SHIELDS VALLEY COMMERCIAL CLUB

v.

**MOUNTAIN STATES TELEPHONE & TELEGRAPH
COMPANY.**

[Docket No. 455; Report and Order No. 118.]

Rates — Transfer of territory to another company — Right of former subscribers to free service.

The fact that the subscribers of a telephone company enjoy service in a territory covered by one of its exchanges does not entitle them to
P.U.R.'15A.—60.

the same service free of charge after such exchange and territory have been transferred to another company.

Service — Telephone — Adequacy — Duty of company to supply where rates are reasonable.

When a public service corporation is serving the public, and the rates charged for such service are in and of themselves fair and reasonable, the company must, in exchange, render dependable service.

Service — Telephone — Adequacy — Duty to supply as to nonpaying branches.

The fact that a branch line of a telephone company in the nature of a feeder does not of itself pay, while the main line is enjoying prosperity, is not a good and sufficient reason for nondependable service.

Rates — Telephone — Discrimination — New schedule ordered.

The rates of a telephone company having been found discriminatory, it was ordered to file with the Commission within thirty days a schedule of nondiscriminatory rates, with a full explanation of the basis used in arriving thereat.

[February 20, 1915.]

PROCEEDING to have the service of a telephone company declared inadequate and to have its rates declared unreasonable and discriminatory; complaint as to unreasonableness of rates dismissed and as to inadequacy of service and discriminatory rates upheld.

Appearances: Complainant by H. J. Miller; defendant by C. G. Cotton, Div. Com. Supt.

By the **Commission**: Following complaint of the Shields Valley Commercial Club, a hearing was ordered and held at Clyde Park, December 15, 1914.

That part of the defendant's system, subject of complaint, was originally a rural or farmers' telephone company, with central exchange at Clyde Park. The several lines supplied by central exchange were: Dorsey line, 31 miles, passing through Wilsall, supplying that point, and extending north as far as Dorsey; Sedan line, 13 miles, extending west from Wilsall; Latt lines, 16 miles, extending east from Wilsall; Brackett Creek line, 11 miles, extending west from Clyde Park; Rock Creek, Cottonwood, and Horse Creek lines, 31 miles, extending east and north from Clyde Park; Fall Creek line, connecting with trunk line, 6 miles south of Clyde Park and extending east and south 7 miles; Willow Crook line, connecting with trunk line 6 miles south of Clyde Park and extending west.

In addition to the above there was the trunk line, Clyde Park

to Livingston. Those properties, owned by Blair & Company, were purchased by the defendant January 1, 1912.

The defendant claims that after taking over the properties, operating difficulties began to develop until it was decided to abandon that portion north of Clyde Park, which includes Wilsall, the Sedan, Latt, and Dorsey lines. However, the business men of Wilsall made an offer for that part of the company's holdings, and the same was accepted, transfer being made March 7, 1914. Part of the complaint of Shields Valley Commercial Club is that the territory they formerly reached having been greatly circumscribed by this transfer, their phones were of far less value than previously, and consequently the rate, if theretofore reasonable, must now be unreasonably high for service rendered. They also advanced the argument that for the reason they previously enjoyed the territory involved in transfer and having an installation of sixty-four telephones, they are now entitled to the same service free of charge. This idea cannot be entertained by the Commission, as it would cause the Wilsall exchange, now an independent company, to handle complainant's business free. The reasonableness of the rates complained of will be treated with further in this report.

Subsequent to sale, March 7, 1914, the defendant has built an entirely new toll line from Livingston to Wilsall, about 25 miles, at an expense of \$18,000. This line is connected into the Wilsall exchange; a toll of 15 cents, Clyde Park to Wilsall, and 20 cents, Clyde Park to Livingston, is charged. The Commission does not deem these rates unreasonably high, and so holds.

Much evidence was introduced, which tended to show that the physical condition of lines out of Clyde Park exchange was such that reasonable service was impossible. Witnesses testified that poles were rotted off and fallen down, wires strung on 2 x 4's and fences and that some poles had been reset so often that lines across roadways are so low that a wagon loaded with hay could not conveniently pass under. Section 4400 of the Revised Codes of Montana provides in part: "But the same shall be so constructed as not to incommode or endanger the public in the use of said roads, streets, or highways."

Respondent for its defense stated that it had fully intended building an entirely new plant at a cost of \$25,000 at Clyde

Park, and giving what is termed "standard service;" that a canvass of the situation developed that only 108 subscribers could be obtained who were willing to pay the established rates for the different classes of service, which would make the investment nonremunerative; further, that even if they decided to construct a new plant, the financial market was in such condition as to make the raising of money practically impossible.

The Commission must hold to the principle that when a public service corporation is serving the public and the rates charged for such service are in and of themselves fair and reasonable for the service rendered, the company must, in exchange, render dependable service, and the fact that a branch line (which is in the nature of a feeder) does not of itself pay, while the main system is enjoying prosperity, is not a good and sufficient reason for nondependable service.

Since the hearing at Clyde Park, the engineer of the Commission has visited all of the property of defendant in Shields Valley, and examined its physical condition first-hand. Following is his report and recommendations:

The toll line and Fall Creek line are new and in good condition. The Willow Creek line is in poor condition and needs attention. This line has four subscribers. The Brackett Creek line is in such condition that, excepting the crossings, which have had recent attention, the poles must be replaced at an early date or continued trouble will result. This line has seven subscribers. The Rock Creek, Cottonwood, and Horse Creek circuits are on the same load from Clyde Park east for about 5 miles, and then separate. The Rock Creek line is in reasonably good condition. The Horse Creek line is in poor condition, and while circuit was clear, at time of visit, five poles were down. On this line two drops across a road have only 15 feet clearance. This is not sufficient, and a standard of not less than eighteen should be established. The Cottonwood line was clear of trouble, but repairs are necessary. These three circuits have forty-four subscribers. On all loads additional phones will necessitate new circuits, but to add new circuits will also necessitate the expense of general overhauling and rebuilding of different parts of the system. Rerouting will also be necessary, as some of the lines run over private property. The lines are at present ap-

parently in condition to give fair service, but with the frost out of the ground, the true condition will develop. A patrol should be maintained until the system is put in shape to render dependable service, by the resetting or replacing of rotted or broken poles and the raising of crossings to a standard height.

During the period the system was owned by Blair & Company, the making of rates was purely an arbitrary matter, and no uniformity existed. Different rates for the same class of service were not unusual, and many discriminations existed. The defendant company inherited these conditions and rates with the purchase of the property, and while some rates were verbal and some covered by contract, no attempt has been made by the defendant since that time to establish a nondiscriminatory schedule of rates.

Wherefore, this case being at issue upon complaint and answer filed, and having been duly heard and submitted by the parties hereto, and full investigation of matters and things involved having been had, and the Commission having on the date hereof made the foregoing report containing its findings of fact and conclusions thereon, which said report is made a part hereof,

It is ordered that that part of complaint relating to toll-line charges be, and the same is hereby, dismissed;

It is further ordered that recommendations of the Commission's engineer concerning care and upkeep of physical property be followed;

It is further ordered that within thirty days from the date hereof, the defendant, the Mountain States Telephone & Telegraph Company, shall file with the Commission, for its consideration, a schedule of rates, nondiscriminatory, together with a full explanation of basis used.

The secretary is directed to serve upon the parties hereto a true and certified copy of this report and order and to obtain acknowledgment thereof.

Public Service Commission of Montana.

MONTANA RAILROAD COMMISSION.

SCOBEY, RESIDENTS OF, AND VICINITY,

v.

GREAT NORTHERN RAILWAY COMPANY.

[Docket No. 460; Report and Order No. 119.]

Commissions — Powers — Constitutionality of statute conferring.

The Commission will take statutes as it finds them, and will not attempt to pass upon the question whether they confer authority upon it, which the courts may find to be unconstitutional.

Railroads — Highway crossing — Necessity for.

The Commission refused to order a railroad company to make and maintain a highway crossing over its tracks, in order to provide means for reaching certain industries without requiring travelers to go two additional blocks, where the amount of travel that would be accommodated was not known, where the benefit to those who would use the crossing would be slight, where the danger would be increased, and where the opening of the crossing would necessitate the removal of buildings and oil tanks on concrete foundations, for which there was no other location.

[February 25, 1915.]

PROCEEDING to compel a railroad company to make and maintain a highway crossing over its tracks; dismissed.

Appearances: Judge N. Davis for complainants; I. Parker Veasey, Jr., R. T. Taft, W. S. Herman, and J. M. Doyle for defendant.

By the **Commission**: By petition it is prayed that a crossing over the railway company's tracks be established on Janus street, for the accommodation and convenience of the public.

After the taking of testimony was concluded in this case, counsel for defendant made a motion to dismiss on the ground that Janus street was laid out up to but not across the railroad, and that a "crossing" did not therefore exist, and that the Commission was without jurisdiction, inasmuch as it could not exercise the power of eminent domain. The motion was resisted by complainants, taking the position that the street in question "intersects" with the railway right of way, and the necessity for a crossing having been shown, it should be so ordered.

Chapter 65, § 1, Session Laws of 1913, provides in part: "It

is hereby made the duty of all railroads . . . to make and maintain good and safe crossings at all places where their main lines, spurs, and switches intersect or cross public highways, and also to make and maintain such crossings at more than one place in all cities, towns and villages of more than three hundred (300) inhabitants . . .

If crossings are not established within sixty days from presentation of complaint, it is made the duty of the Railroad Commission "to investigate the facts, and if said crossing is necessary it may enforce the provisions of this act by appropriating proceedings in a summary manner." Whether or not chapter 65 bestows upon the Commission authority which the courts might find to be unconstitutional, we will not attempt to discuss; we must simply take the statutes as we find them. In the determination of this particular case, however, the question of jurisdiction is not paramount, in view of the Commission's findings of fact.

The testimony and exhibits show that the town of Scobey is all on one side, *viz.*, the south side of the railroad; it is unincorporated, and has not been platted north of the tracks, although the elevators, stock yards, and a number of other industries are located on that side,—all on sites furnished by the railway company on its right of way. Main street, running north and south, divides the town, which is four blocks long, into two equal parts, and extends across the tracks, reaching the elevators, etc., referred to. This is the only crossing. Janus street is two blocks west of Main; the object of the petition is to provide means for reaching certain industries without having to drive these two additional blocks, and undoubtedly such a crossing would be an advantage to some, particularly teams coming in from the southwest, as well as certain business interests in Scobey proper, lying west of Main street; but the situation must be considered as a whole. It cannot be learned from the record, neither can an estimate be made of the amount of travel that would be accommodated if the crossing were put in; the testimony in this respect is altogether indefinite, and in fact there is no testimony at all from the farmers who, it is alleged, would be benefited. The record shows, however, that the grain from the southwest is hauled long distances into Scobey,—anywhere from 20 to 80

miles; and it is not apparent that to drive two blocks further would entail any particular hardships.

The Commission is not impressed with the importance of a crossing on Janus street at this time: First, for the reason that two of the elevators, the stockyards, and the loading platform are quite as accessible from the present crossing as the proposed; also that the elevators west of Main street apparently received as much grain as the others, which might seem to have some advantage by reason of their location. Second, there is now a crossing on section line 1,800 feet west of Janus street. Third, the element of danger that is always present while crossing tracks, especially in yards,—in this case four. Fourth, the fact that to open up this street would necessitate the removal of buildings and oil tanks, on concrete foundations, of the Continental Oil Company, located on railway company's right of way, and it would appear from the record that there is no other location that could be assigned.

The Commission is frank to say that in its opinion additional crossings should not be ordered, unless it is very apparent and important that they should be. We believe it is better to put up with moderate and occasional inconveniences than to insist upon something of questionable benefit, except perhaps to a certain few. We are not convinced from this investigation that the desired crossing should be established; and in view of the conditions as set forth in this report, and the Commission's conclusions thereon as herein expressed.

It is ordered that the proceeding be, and the same is hereby, dismissed. The secretary is directed to serve upon the parties hereto a true and certified copy of this report and order.

Board of Railroad Commissioners of the State of Montana.

SOUTH DAKOTA RAILROAD COMMISSION.

IN RE PUKWANA TELEPHONE COMPANY.

[F.178.]

Service — Telephone — Contracts for interchange — Filing.

Certified copies of contracts between telephone companies with reference to interchange of service must be filed with the Commission.

Rates — Telephone — Business and residence phones on single lines.

A rate for business and residence telephones when located on one line, which is less than the combined business and residence rates, is discriminatory, since it is the use to which a telephone is devoted which determines its classification.

Rates — Telephone — Payment in advance.

A schedule of telephone rates for rural lines of \$17 per year if paid yearly in advance, and \$8.50 for each six months' period if paid in advance, and \$1.50 per month if paid monthly in advance, was approved.

Rates — Telephone — Penalty for nonpayment.

A schedule of telephone rates for rural lines, providing a penalty of 10 cents a month if not paid within ten days after payments become due, was approved.

[February 24, 1915.]

Application of telephone company for authority to increase its rates; granted.

By the **Commission**: The Pukwana Telephone Company having filed an application asking that certain changes be authorized in its schedule of rates, the matter was set down for hearing in the office of the Pukwana Telephone Company at Pukwana, Brule county, South Dakota, on Wednesday, the 10th day of February, 1915. The hearing was held before Commissioner Murphy. The applicant was represented by J. A. Stransky, owner and manager of the Pukwana Telephone Company, and the subscribers of the Pukwana Telephone Company were represented by Albert Wodraska, W. G. Cluttler, Ernest Springer, and L. V. Ander. Many other rural subscribers of the Pukwana Telephone Company were present.

The record shows that the Pukwana Telephone Company is owned and managed by J. A. Stransky of Pukwana, South Dakota. The exchange consists of 14 business phones, 23 residence subscribers, and 175 rural-line subscribers; that connected with the exchange are two rural lines belonging to the Nebraska Telephone Company, on one of which there are 14 subscribers, and on the other 12 subscribers; that the Buffalo County Telephone Company's lines are connected with the Pukwana Exchange through a farm switch and over one of the Pukwana Telephone Company's rural lines. The evidence is not clear as to the number of subscribers of the Buffalo county lines that have the privilege of interchange of messages through this connection, but the evidence of Mr. Stransky indicates that there are in the neighborhood of 80 to 100 'phones connected in this manner.

The evidence further shows that the subscribers on the Nebraska Telephone Company's lines mentioned, and the subscribers on the Buffalo county lines, have so-called free interchange of service with the subscribers of the Pukwana exchange; and further that contracts have not been entered into, and certified copies thereof filed with the Board, as required by law.

In the company's application it is disclosed, and the record shows, that the company's schedule of rates for exchange and rural-line service is as follows:

\$2 per month for business phones in Pukwana, and \$1.50 per month for residence phones, and \$3 per month where both business and residence phones are on one line, payable at the end of each month; and \$18 per year payable in advance for rural line rental.

In the company's application authority is requested to put into effect the following schedule of rates:

Business phones \$2 per month; residence phones \$1.50 per month; \$3 per month for both business and residence phones where they are on one line. For rural lines \$8.50, if paid six months in advance, and \$17 if paid yearly in advance; and those subscribers that do not want to take advantage of the discount must pay \$1.50 per month in advance, and if not paid within ten days after due, a penalty of 10c per month be added.

One of the reasons advanced by Mr. Stransky for his request that payments of rental rates be made in advance was to the effect that he was put to great expense in the matter of making collections, and also to serious loss by reason of poor accounts. In other words, people renting farms often moved after having received several months' service, and he was unable to locate the parties, and oftentimes, if located, it was impossible to force collection, and the theory upon which he based his application for change of rules in connection with the collection of telephone rentals was largely due to his belief that if an intending telephone subscriber was required to pay reasonably in advance, that the cost of collection would be reduced and incidentally the loss from bad accounts would be materially lessened. The subscribers appearing at the hearing, as well as those parties representing the different lines and that gave testimony, expressed themselves as being well pleased with the proposed changes, and apparently considered the proposed schedule, particularly in regard to the requirements as to advanced payments, as being very reasonable; and their testimony indicates that it is their opinion that no serious objection would be made by any of the subscribers of the Pukwana Telephone Company.

The item in the existing schedule of rates of the Pukwana exchange, wherein it is provided that a subscriber of the telephone company having a residence and business phone on one line, and is paying therefor \$3 per month instead of the full and regular business and residence rate, is subject to condemnation and will be considered in this discussion. It appears to the Commission, and has been so decided in other and similar cases, to be a discrimination; and it is our opinion that the practice should be discontinued. Under the present practice of telephone companies, as well as the practice outlined by different Commissions having jurisdiction over the telephone business, it is considered that the use to which a phone is devoted determines its classification, and the antidiscriminatory law provides absolutely that a telephone company shall not discriminate as between individuals or companies in any manner whatsoever as to the rates charged for a particular class of service.

With reference to the connection of rural farm lines owned by the Nebraska Telephone Company and the rural farm lines known as the "Buffalo county line," that are now and have been in the past upon a free interchange basis, and contracts not having been entered into in writing, and certified copies thereof not having been filed with the Board, the Pukwana Telephone Company is admonished to submit to the Commission copies of agreements or contracts covering the switching arrangements that are to exist between these companies, within thirty days from the service of this decision and order.

From the above statement of facts, it is our conclusion that the application of the Pukwana Telephone Company should be approved in so far as to fix the rental rates for business phones and residence phones of the town exchange, and the rural line rates, and the terms in connection with the collection thereof, and that the company be authorized to file with the Commission and collect from its subscribers the following schedule of rates:

For business phones, \$2 per month. For residence phones, \$1.50 per month. For rural line phones, if paid yearly in advance, \$17 per year, and if paid six months in advance at the rate of \$17 per year, or \$8.50 for each semi-annual period; and if paid monthly in advance \$1.50 per month, and if not paid within ten days after due, a penalty of 10c per month be added.

By order of the Board.

Note.—A formal order in accordance with the opinion was made on February 24, 1915.

MISSOURI PUBLIC SERVICE COMMISSION.

O. F. MEEK ET AL.

v.

CONSUMERS ELECTRIC LIGHT & POWER COMPANY, A
CORPORATION.

[Case No. 432.]

Valuation — Book cost — Proper charges to capital.

The amount added to the plant account on the books of an electric light and power company, to offset a like amount credited to capital stock, was excluded by the Commission in arriving at the total investment in the plant, where the entry did not represent any real increase in the investment or in plant expenditure.

Valuation — Exact original book cost — Replacements — Depreciation — Accounting.

The exact original book cost of the property of a public service company cannot be determined where the total investment account contains amounts paid for replaced property as well as the cost of the replacements, and where there has been no allowance for depreciation.

Valuation — Land — Present value rather than original cost proper basis for rates.

The basis of valuation of land for rate-making purposes is its fair present value; that is, not what it might have cost, but what it is worth at the date of the valuation.

Valuation — Land — Saving due to switching facilities.

The value of the land of an electric light and power company should not be determined by capitalizing the saving, due to delivering coal in carload lots, over the cost of hauling it in wagons, owing to the favorable location of the property with reference to switching facilities.

Valuation — Land — Overhead allowance.

In fixing the value of the land of an electric light and power company in a valuation for rate-making purposes, an 8 per cent overhead allowance was added to the estimated value of the land, which was not depreciated for present condition.

Valuation — Buildings — Power house — Bricks under boiler.

Bricks for a boiler setting in a power house go with the boiler and should not be included in an estimate of the value of the building.

Valuation — Electric generator — Cost of reproduction.

An allowance for the cost of reproduction of an electric generator of \$2,200, f.o.b. factory, approximating \$14.50 per kilowatt is reasonable for an obsolete belted, alternating type of equipment, designed to operate at fifty revolutions per minute, especially where the estimate of the value of such generator, in its present condition, is considerably higher than the actual cost to the company.

Valuation — Overhead charges — Interest during construction.

An allowance, in the valuation of the property of a public service company, of 2½ per cent for interest during construction, based upon a rate of 6 per cent per annum applied for half of a ten months' period of construction, is reasonable where 6 per cent is the usual rate of interest for long-term loans.

Valuation — Overhead charges — Taxes and insurance.

An allowance in the valuation of the property of a public service company, of 1½ per cent for taxes and insurance, is reasonable, where the actual taxes paid by the company, on a physical valuation, would hardly amount to the rate of 1 per cent.

Valuation — Overhead charges — Contingencies.

An allowance, in the valuation of the property of a public service company, of 2 per cent for contingencies, was held reasonable.

Valuation — Overhead charges — Legal and organization expenses.

An allowance in the valuation of the property of a public service company of 2 per cent for legal and organization expenses was held reasonable.

Valuation — Overhead charges — Engineering and supervision.

An allowance, in the valuation of the property of a public service company, of 5 per cent for engineering and supervision, was held reasonable.

Valuation — Overhead charges — Total percentage allowed.

An allowance, in the valuation of the property of a public service company, of 13 per cent, together with an allowance of 8 per cent on land, was held to be a reasonable provision for all overhead charges.

Valuation — Equipment not in use.

Electric generators which have not been in use for several years cannot be included in a valuation for rate-making purposes of the property of an electric light and power company "used and useful" in serving the public, although the company expects to put them in service again, as a reserve, for which service they will probably be necessary.

Valuation — Cost of franchise.

The expense of a city election incurred by an electric light and power company, in obtaining its franchise, is allowable in the valuation of the company's property for rate-making purposes, under a statute which forbids the capitalization of any franchise, beyond the amount actually paid to the state or to any political subdivision thereof.

Valuation — Cost of franchise — Allowance in overhead charges.

The cost of a franchise should not be added to the estimate of the cost of reproducing the property of a public service company, which includes an allowance for legal and organization expenses and contingencies, more than sufficient to take care of such charge.

Valuation — Going value — Cost of development.

The Commission, valuing the property of an electric light and power company for rate-making purposes, did not attempt to fix a separate and distinct allowance for going value, but took into account the fact that the plant was in successful operation as a going concern, where

there was no satisfactory evidence as to the cost of establishing the business, and where it appeared that the company had paid to the holder of its stock and bonds large amounts in dividends and interest.

Return — Reasonableness.

All that a public service company is entitled to demand in order that it may have a full compensation is a fair return upon the reasonable value of its property at the time it is being used by the public.

Valuation — Fair value for rate-making purposes — Elements considered.

In fixing the fair present value of the property of an electric light and power company for rate-making purposes the Commission considered the original cost of construction, including the amount expended in permanent improvements, the amount of bonds and stock, the present as compared with the original cost of construction, and the probable earning capacity under the rates fixed as maxima, including the sum required to meet operating expenses and allowances for return, surplus, contingencies, and depreciation.

Rates — Electric light — Step plan.

A declining step plan of electric rates for increasing consumption is objectionable for the reason that it requires adjustment.

Rates — Electricity — Street lighting — Reasonableness — Moonlight schedule.

A contract under which an electric company furnishes 221 sixty-watt Mazda lamps on a modified "Philadelphia moonlight schedule" for the compensation of \$250 per month was held reasonable.

Rates — Discrimination — Free service.

The furnishing of electricity free to the stockholders of an electric company, or to any other consumer, constitutes unjust discrimination.

Rates — Electric lighting — Unreasonableness — Minimum charge.

Minimum charges for electric lighting, varying from nothing to \$25 a consumer a month, are unreasonable and in violation of § 68 of the Missouri public service commission law.

Rates — Electric lighting — Discrimination — Minimum charge.

Minimum charges for electric lighting, varying from nothing to \$25 a consumer a month, are unjustly discriminatory and in violation of § 68 of the Missouri public service commission law.

Rates — Electric lighting — Minimum charge.

A reasonable minimum monthly bill for electric lighting to consumers who use little or no current in any one month is justifiable, and such charge should be based on the average cost of serving, the consumers paying the minimum bill.

Rates — Electric lighting — Minimum charge — Amount.

A minimum charge for electricity of 75 cents per month for residence-lighting consumers and \$1 per month for business-lighting consumers was held reasonable, where the average cost of service for minimum consumers was 75 cents per month.

Rates — Meter rental.

A charge of an electric company for meter rent is unreasonable and unlawful, where the meters have been included as part of the invest-

ment of the company on which it is entitled to a return, since this would amount to a double return upon this item of investment.

Return — Reasonableness — Eight per cent allowance.

A return of 8 per cent on the fair present value of the property of an electric light and power company was allowed where there appeared to be considerable risk in the particular enterprise and little chance for abnormal profits, and where there had been included in the operating expenses such items as insurance, taxes and license fees.

Return — Allowance for surplus and contingencies.

It is a wise business policy on the part of a public utility corporation as well as a benefit to the public to make reservations for surplus and contingencies.

Return — Amount allowed for surplus, contingencies, and depreciation.

An allowance of 5 per cent on the fair present value of the property of an electric light and power company was made by the Commission to provide for surplus, contingencies, and depreciation.

Service — Rules — Necessity for.

It is of interest both to an electric light and power company and to the public that rules of service should be published and definitely known.

Service — Discontinuance — Rules — Necessity for.

An electric light and power company should establish and publish a reasonable rule for discontinuing service.

Rates — Security for payment — Rules — Necessity for.

An electric light and power company should establish a reasonable rule for personal security or guaranty deposit, since each consumer should pay the amounts he owes the company under reasonable rates.

Rates — Discrimination — Sliding scale.

The Commission held that the maximum prices to be charged by an electric light and power company, in order to be nonpreferential, should be fixed upon a sliding scale, with maximum prices for the various amounts of electricity furnished to consumers thereunder, without disturbing existing flat rates and street-lighting rates.

Rates — Electric lighting — Separate schedules.

It is unnecessary to provide separate schedules of rates for different classes of residence and business lighting consumers, where the present consumers are all lighting consumers, since one schedule of block rates will be sufficient for the two classes, with separate provisions for minimum monthly bills for residence lighting and business lighting.

Rates — Maximum charges for electric lighting.

The Commission found that a schedule of maximum rates of 15, 12, and 8 cents per kilowatt hour for electric lighting in a city, with 10 per cent discount for prompt payment and monthly minimum bill of 75 cents for residence lighting and \$1 for business lighting, was reasonable and just.

[January 28, 1915.]

PROCEEDING to determine the reasonableness of the rates of

an electric light and power company; order granted fixing value of company's property, declaring existing rates unjust and unreasonable and establishing a new schedule.

By the **Commission**: I. The Complaint.—The complaint of O. F. Meek and thirty other consumers of electricity, against the Consumers Electric Light & Power Company of De Soto, Jefferson county, Missouri, filed December 5, 1913, alleges that the rates and charges for electricity by defendant are unjust, unreasonable, and unjustly discriminatory and unlawful, in that defendant has established and applied unreasonable, unjust, and arbitrary classifications to consumers, and that defendant charges rates for electricity on metered service which are unreasonable in amount and unjustly discriminatory between consumers in the same class, and that defendant's rates are unjustly discriminatory and unreasonable in charging various amounts from one to twenty-five dollars per month as a so-called minimum charge, and in addition, that defendant charges and collects a monthly meter rental of 25 cents from each consumer, which is unlawful and unreasonable.

Defendant, answering in general, denies that its rates are unreasonable, unjust, or unduly discriminatory, or that its practices are unlawful or in violation of its franchise or the rates on file with this Commission. "Defendant admits that it charges sums varying from 10 cents to 20 cents per kilowatt-hour, and a minimum charge of one and two dollars per month, and a charge of 25 cents per month meter rent, but denies that said rates are exorbitant, unjust, unreasonable, or unlawful, and alleges that these rates are the rates allowed by and set forth in the schedule of rates contained in its contract and franchise for the different classes of service, and the amount of current consumed by these several consumers." "Defendant admits that it charges various sums ranging from two to twenty-five dollars per month minimum, with an additional charge of 25 cents meter rent per month to business houses, but denies that said rates are extortionate, unreasonably high, or discriminatory, when the amount of current consumed and the service rendered to the different consumers is taken into consideration, and defendant further denies that said meter charge of 25 cents per month is

unreasonable or unlawful, but alleges that said meter charge is both reasonable and lawful, and is allowed by the provisions in its franchise and contract with said city of De Soto."

II. This complaint was heard in De Soto before Commissioner Shaw on April 17, 1914, and on July 1, 1914. On July 6, 1914, the Commission, upon its own motion and in accordance with the provisions of § 78 of the public service commission law, entered an order for the valuation of the property of defendant devoted to the public use in supplying electricity in the city of De Soto, case No. 432. "in order that the Commission may be enabled to determine the reasonableness of the rates now being charged by said company, and to fix reasonable maximum rates to be hereafter charged by said company for services rendered by said company in furnishing electric energy for light, heat, and power." Thereafter on the 18th day of September, 1914, further hearing was held at which an audit of defendant's accounts and estimate of the cost to reproduce the property of defendant made by an accountant and engineers for this Commission were put in evidence, defendant's evidence as to values having been introduced at the hearing on July 1, 1914. Brief was filed by defendant, and these cases were argued orally on behalf of defendant on November 24, 1914, complainants not appearing, and submitted. Material facts disclosed by the evidence are as hereinafter stated.

III. Incorporation and Securities.—Defendant, Consumers Electric Light & Power Company, was incorporated in December, 1890, with an authorized capital stock of \$50,000. The incorporators were O. M. Munroe, B. J. Arnold, and Mord Roberts. We have no evidence as to how much money, property, or labor, if any, was received by the company for this issue of \$50,000 par value of capital stock, beyond the evidence of O. M. Munroe, that upon incorporation he himself received ten shares, or a par value of \$1,000 for acting as secretary, and without payment of any money, property, or labor.

O. M. Munroe, about 1895, acquired the entire capital stock, which he now holds, with the exception of four shares held by members of his family, and has since controlled and managed the company as president and manager, assuming at that time the indebtedness of the company, which, according to his testi-

mony, consisted of a note for \$14,724.50 due the Thompson-Houston Company, an electric manufacturing company (since succeeded by the General Electric Company) and a note for \$16,977.75, held by O. M. Munroe personally for amounts of money advanced by him.

There is issued and outstanding \$30,000 in bonds of the Consumers Electric Light & Power Company, secured by deed of trust to the Mississippi Valley Trust Company, executed in 1895. These bonds are held by O. M. Munroe, and in regard to them he testified "that after said bonds were issued it was found impossible to sell them, and affiant was compelled to pay off said indebtedness of the company, and take these bonds to reimburse himself for above advances," the above advances consisting, so far as we have knowledge, of the two notes aforesaid, aggregating \$31,702.25. These bonds were originally for a term of ten years, and have since been twice renewed for five-year periods.

The foregoing statement in regard to stocks and bonds is based on information obtained by the accountant from Mr. Munroe and upon deposition of Mr. Munroe, the president of the company, as there were no records on the books in regard to the bonds, and only one record in regard to the capital stock,—the journal entry, "Credit, capital stock account, \$50,000" dated August, 1910.

IV. Property, Equipment, and Facilities.—Defendant operates a small "electric plant" in the city of De Soto, where the current is used for lighting. The city of De Soto has at the present time a population of approximately 4,500, the population having in recent years decreased. From the census reports the population in 1890 was 3,960, in 1900 was 5,611, in 1910 was 4,721. This decrease in population is largely accounted for by the reduction of the number of employees of the Iron Mountain Railroad shops located in De Soto. The pay rolls of these shops in 1905 ranged from \$45,000 to \$60,000 a month, but in 1914 had decreased in the range between \$24,000 to \$28,000 per month. In the meantime, however, a shoe factory had been established, the pay roll of which approximates \$10,000 a month.

The real estate owned by defendant consists of a tract of land of approximately 410 feet frontage on Third street and 125 feet in depth, located somewhat to the east and north of the busi-

ness section of the city and two blocks east of the main line of the St. Louis, Iron Mountain, & Southern Railroad, which runs north and south through the city of De Soto and from the tracks of which railroad a short spur or switch track extends to the plant, over which coal in earload lots is delivered. Upon this lot is located a building housing the generating plant and two small buildings used at present for storing supplies. This power house is a one-story brick building with wooden rafters and "patent roofing," and contains the steam and electric machinery for the generation and control of electricity. The main items of machinery comprise the following:

One horizontal return tubular boiler 78 inches by 18 feet, for a steam pressure of 150 pounds per square inch, set in a brick setting and connected by breeching a steel stack or chimney, which is 48 inches in diameter and 70 feet high.

Water is supplied to this boiler by a small single cylinder boiler feed pump $5\frac{1}{2}$ inches by $3\frac{1}{4}$ inches by 7 inches through a closed feed water heater 30 inches by 7 feet. There is a duplicate boiler feed pump of the same type and size, which needs overhauling for use as a reserve in case of emergency.

Water piping connects the boiler, pump, heater, and cisterns, the water being obtained from an artesian well 6 inches in diameter and 280 feet deep.

Steam generated in the boiler is supplied through steam piping to a simple heavy duty Corliss engine 16 inches by 36 inches. This engine is belted to a three-bearing, revolving armature type, alternating current generator of 150 kilovolt-amperes capacity (that is, 150 kilowatt capacity at 100 per cent power factor) 60 cycles, single-phase, 2,200 volts, compound wound, 450 revolutions per minute. There are two exciters, small size direct current generators, one $4\frac{1}{4}$ kilowatts capacity, driven at 1,800 revolutions per minute by belt from the generator, and the other $3\frac{3}{4}$ kilowatts capacity, 1,350 revolutions per minute, ready for use as a reserve exciter.

There is a switch board controlling the circuits of the generators, exciters, arc-light transformers, and outgoing distributing wires, together with the necessary wiring and connections; also a 16 kilowatt constant current regulator for the series street

lights, 2,200 volts, primary voltage and $5\frac{1}{2}$ amperes secondary current.

The distributing system, or overhead pole line, contains 562 poles with cross arms, braces, and guys; 2,365 glass insulators with pins and brackets. The pins and brackets are mostly wood, and a few of them are iron; 3,077 pounds, or approximately 49,000 feet of 2,200 volts or primary wire in sizes Nos. 6, 8, 10, 12, and 14; 4,483 pounds or approximately 66,000 feet, of 110 volt or secondary wires in sizes Nos. 6, 8, 10, 12; 6,186 pounds, or approximately 82,000 feet of No. 8 wire for the series street-lighting circuit; 286 service connections, that is, wires from secondaries to consumers' installations; 30 transformers ranging in capacity from 1 to 15 kilowatts, with a total transformer capacity of 136 kilowatts; 227 meters of 110 volts, ranging from 3 to 50 amperes capacity, the total capacity of which is 194 kilowatts.

V. Operating Data.—From the evidence of defendant's engineer and the accountant and engineers of the Commission, the following operating data were obtained, which in some respects are approximate where exact measurements and records were not available:

- Nominal capacity of boilers, 150 horse power.
- Steam pressure, 150 pounds per square inch.
- Rate capacity of engine, 225 horse power.
- Rated capacity of generator, 150 kilowatts at 100% power factor, 2,200 volts single-phase, primary voltage 2,200 volts.
- 30 transformers, total capacity 126 kilowatts.
- Transformer voltages 2,200 volt primary, 110 volts secondary.
- Meters, 227 in number, total capacity, 194 kilowatts.
- 286 number of service connections.
- 221 street lights, 40 watt, $5\frac{1}{2}$ ampere, series, Mazda.
- In the year 1913 the plant operated 5,184 hours out of the 8,760 hours in the year.
- The maximum output in the year 1913 was approximately 84 kilowatts.
- The average daily peak, or average maximum daily load in 1913, was approximately 65 kilowatts.
- The average low load in 1913 was approximately 18 kilowatts.
- The average load while in operation 5,184 hours in 1913 was approximately 33 kilowatts.
- The total kilowatt-hours generated in 1913 was approximately 170,000.
- The total kilowatt-hours delivered in 1913 was approximately 130,000, estimated as follows:
 - From meter readings of 153 consumers, 79,000 kilowatt-hours; 32 consumers on flat rate, 14,000 kilowatt-hours; street lighting, 10 kilowatts for 4,200 hours, making 42,000 kilowatt-hours.
 - 170,000 kilowatt-hours generated and 135,000 kilowatt-hours delivered, leaves lost and unaccounted for, electric energy amounting to 35,000 kilowatt-hours, which approximately accounts for 5 per cent line loss of 10,000 kilowatt-hours, transformer losses of 21,000 kilowatt-hours and meter losses of 4,000 kilowatt-hours.

The ratio of the average load during operation to rated load or annual load-factor is approximately 22 per cent.

The ratio of the average load to the maximum peak load, or load-factor as defined by the standardization rules of the American Institute of Electrical Engineers, is approximately 40 per cent.

VI. Original Cost.—An audit of defendant's books, records, and accounts was made by J. A. Whitaker and W. R. Francisco, accountants of this Commission, and submitted in the form of a report dated September 23, 1914, by J. M. McShane, Chief Accountant. Accountant Whitaker qualified as an expert, and his testimony is in evidence, supported by that of Accountant Francisco. These accountants found an opening entry on the books dated January 1, 1894, showing an investment in plant account at that date of \$30,535.64, not including \$1,062.50, there stated as the value of franchise, which has since that time expired. They were unable, however, to verify this amount, as no vouchers or other records were available. Additions to plant account from January 1, 1894, to December 31, 1913, amounted to \$10,284.15, and this amount was verified by the accountants from available vouchers as consisting of proper entries to the plant account. The total investment in plant found by the accountants is, therefore, \$40,819.79, about one fourth of which is known to be correct, having been verified, the other three fourths depending on the single book entry, that of January 1, 1894, unsupported by vouchers. In arriving at this sum of \$40,819.79 as the total investment in plant, the accountants did not include a book entry of \$36,880.89, "amount added to plant account August 31, 1910, to offset a like amount credited to capital stock," as this entry did not represent any real increase in investment or in plant expenditure. Further, it is in evidence that replacements have not been properly entered, so that the total investment in plant contains amounts paid for items of property which have since been replaced, as well as the cost of the items which replaced them, and no depreciation has been written off in the twenty-four years of operation, though doubtless considerable depreciation has actually accrued. We have no evidence on which to determine the amounts of improperly included replaced items or the accrued depreciation, and consequently are unable to arrive at a definite sum representing the exact original cost, beyond the fact that it does not exceed \$40,820. The preponder-

ance of the evidence is that the capital actually expended by the defendant for their property devoted to public use is somewhat less than the sum of \$40,000.

VII. Estimates of the Costs of Reproduction.—Estimates of the cost to reproduce the property of defendant new, and also in its present condition, were made by R. L. Baldwin, an engineer of this Commission, and by W. S. Merkle, an engineer for defendant. Engineer Baldwin presented a definite program of reproducing the property, making a detailed inventory of existing property and applying unit costs from his own extensive experience and from reliable data on file with the Commission, allowing in these unit costs 10 per cent contractor's profit and 8 per cent overhead charges on land, and 13 per cent overhead charges on all items other than land. His estimate of the cost to reproduce new all the used and useful property of defendant as at September 14, 1914, was \$42,604, and his estimate of the cost to reproduce the used and useful property in its present condition was \$32,354, which represents a composite percentage condition of approximately 76 per cent. In addition, he estimated \$2,340 as the cost to reproduce new, and \$1,308 cost in its present condition, of equipment not now in use.

Defendant's engineer, Merkle, estimated "the total property valuation new" at \$78,763.16, including "total physical property valuation," \$49,630.69; "expenditures during construction," \$12,407.67; "organization," \$472.67; "franchise," \$400; "working capital," \$2,500; "other intangible capital," \$16,215.02; and he estimates the "present value" at \$68,064.74, including "total physical property valuation," \$39,012.94 and "expenditure during construction," "organization," "franchise," "working capital," and "other intangible capital," \$29,051.40.

The estimates of Engineers Baldwin and Merkle are not in the same form, and so it is not practicable to compare them item by item. Their inventories or lists of property items, however, do not differ materially, in fact check very closely. Defendant contends that Engineer Baldwin's estimates are too low, particularly in the items of land, buildings, generator, and overhead allowances, and that he erred in fixing too low unit prices, and in not including equipment which is not in use and has been

replaced, so it appears necessary to consider these items in some detail.

Land.— The land in question is the only tract owned by defendant,— that on which the power house is located. It is about 410 feet by 125 feet, located in a part of the city sparsely populated, but not far from the business district; it is supplied with a short switch from the Iron Mountain Railroad, and part of this land is in a creek. Engineer Baldwin's estimate on land is \$2,050, or \$5 per front foot, with an 8 per cent overhead allowance, making a total of \$2,214, and is not depreciated for present condition. Engineer Merkle's estimate on land is \$4,100 or \$10 per front foot.

Defendant presented two witnesses as to the value of land, both of whom have lived in De Soto for a number of years and have experience in the real estate business. R. B. Jones, cashier of the People's Bank, testified that in his opinion this tract of land was worth \$1,000, on account of its location.— “from the fact that the switch from the Iron Mountain can be placed alongside without any trouble, connecting it;” and George Mahn, who is in the real estate and insurance business and has lived in De Soto fifty-four years, testified that he was acquainted with the land in question, and that a fair and reasonable value of the land without improvements on it, but including city improvements, would be \$1,000; and, further, that he fixed this value “for the purposes for which it is used, and being located where they can get a switch in there, and get his coal in without having to haul it a great distance, and then it is next to the creek there where they can get water, and it is a little higher location than some other land over there, and in case of high water the water don't get into the plant.”

Defendant advances the ingenious contention that the value of this land should be determined by capitalizing the saving due to delivering coal in earloads over the cost of hauling it in wagons, estimated at 30 cents per ton, and that this saving, applied to the tons of coal used and capitalized at 6 per cent, would add to the value of the land \$5,800, on account of the switching facilities. We agree with defendant that “the basis of valuation that the defendant is entitled to is the fair present value of the land, and not what it might have cost, but what it is worth at the

date of the valuation (*Wilcox v. Consolidated Gas Co.* 212 U. S. 19, 53 L. ed. 382, 48 L.R.A.(N.S.) 1134, 29 Sup. Ct. Rep. 192, 15 Ann. Cas. 1034).” But it appears to us that the present value of the land, taking into account all the elements, is exactly what defendant’s witnesses, Jones and Mahn, had in mind when giving their opinion that it was worth \$1,000, and we do not for a moment concede that defendant company can capitalize a saving due to a switch which belongs not to defendant, but to a railroad company,—the saving means lower operating expenses, not increased investment. Taking all the evidence as to land into consideration, we believe the amount of \$2,214, estimated by Engineer Baldwin, being over twice as much as the amount fixed by defendant’s own expert real estate witnesses, is not only a fair and reasonable present value of the land owned by defendant company, but is quite a liberal allowance.

Buildings.—Engineer Baldwin’s estimate on buildings was \$4,357, “cost of reproduction new,” and \$2,831 “present value:” and the corresponding estimates by Engineer Merkle were \$7,060 and \$5,221, respectively. There are only three buildings,—two small frame sheds and a brick power house with a frame roof. Engineer Baldwin’s estimate on the power house is given in detail, which we consider the proper way in which to make such an estimate, while Engineer Merkle’s estimate is a lump sum.

Also defendant produced as a witness C. H. Hopson, who has been a contractor and builder for some forty years in De Soto. Contractor Hopson made a detailed estimate of the cost to build the power house at the present time. The total of his estimate was \$5,488.70 as against \$3,887, and in addition 13 per cent overhead charges by Engineer Baldwin and \$5,860 by Engineer Merkle. We have placed considerable reliance in the estimate of Contractor Hopson, on account of his long experience in this locality, and have gone over his estimate with considerable care, and find that his estimate checks very closely with that of Engineer Baldwin, when two evident mistakes by Contractor Hopson are taken into consideration,—Contractor Hopson included in his estimates 136,000 building brick, \$2,040, and 23,700 brick for the boiler setting, \$390. The brick for boiler setting are properly included with the boiler, instead of as part of the building,

and they are so shown in Engineer Baldwin's appraisal; consequently \$390 should be deducted from Mr. Hopson's estimate on the building. But Contractor Hopson estimated 136,000 brick in the building, whereas Engineer Baldwin finds only 70,000 in round numbers, in more exact figures, 69,000 brick. We have taken the dimensions of the building from the plans of Contractor Hopson and the evidence of Engineer Baldwin, and find that Contractor Hopson is mistaken and has included nearly twice the number of brick actually in the building; reducing his number of brick from 136,000 to 70,000 reduces the cost of this item for building brick from \$2,040 to \$1,050; that is, the amount is \$990 too large, using his own prices. Three hundred and ninety dollars off of Contractor Hopson's estimate for boiler brick, and \$990 off for mistake in the number of building brick, reduces his total by approximately \$1,380 from \$5,400.70 to \$4,110, which is almost an exact check with Engineer Baldwin's estimate, if to his amount of \$3,887 we add 5 per cent of his 13 per cent overhead charges to correspond with Contractor Hopson's 5 per cent for plans and superintendence. So close a check between Engineer Baldwin's estimate and that of Contractor Hopson's as corrected for evident mistakes is remarkable, and discredits the lump sum estimate of Engineer Merkle, who is evidently high also in his estimates on the small sheds. Considering all the evidence in regard to the buildings, we find that the estimates of Engineer Baldwin appear most reliable, and represent the fair and reasonable cost to reproduce new and in present condition the buildings of defendant.

Generator.—Defendant contends that about \$250 should be added to Engineer Baldwin's estimate of \$2,450 on the electric generator. We understand this generator is of an obsolete type not manufactured at the present time, so no present prices can be obtained as a basis on which to estimate the cost of reproducing the generator. In regard to this item, Engineer Baldwin testified as follows:

Q. Taking up another item of discrepancy between your value and Mr. Merkle's, on page 6: You have the generator \$2,450. What is the basis of that figure?

A. Well, that is roughly what you could buy a generator for that would be put in now to take the place of that generator.

Q. Is that the purchase price, or the price installed?

A. No. The purchase price on that was \$890, I think.

Q. In your figures did you put in the purchase price or the price installed?

A. That is the price installed.

Q. That is the generator installed.

A. Yes.

Q. What is the purchase price, the present purchase price on a generator of that sort? Do you know?

A. The present price of that generator would be very hard to get, because it is out of date, changed; so that I had to do that somewhat as we have done other things, make an estimate of what the value would be. I didn't put it in at what that old generator had sold at in the past. It would probably have been higher.

Q. Your figures?

A. No. The past price would probably be higher than my figure. I can give you my figure, though. I allowed \$2,200 for the machine, f. o. b. factory; freight \$150; \$75 for installation and cartage, which is rather high; and \$25 for foundation. This involved some heavy-weight timbers put in there and anchored down to the floor. This makes the total \$2,450.

Q. You don't know what the sale price of that generator was, the factory price, when they had one?

A. I don't know exactly what it was. I imagine probably around \$2,500, or maybe a little more.

We understand this generator was purchased secondhand only a few years ago and at a comparatively low price, though the exact price is not in evidence, Engineer Baldwin having testified that he thought that the price at which it was purchased by defendant was \$890. His allowance of \$2,200 for the cost of this generator f. o. b. factory approximates fourteen and a half dollars per kilowatt, which appears reasonable for a belted type, alternating generator, designed to operate at 450 revolutions per minute. Moreover, his estimate on this generator in present condition appears to be considerably higher than the actual

cost to the company, so we do not think anything should be added to Engineer Baldwin's estimate on the generator, as it appears already sufficiently liberal.

Overhead Allowances. Defendant contends that Engineer Baldwin's overhead allowances were too low. In regard to these overheads, Engineer Baldwin testified:

"Eight per cent on land is shown in the summary. On the other items, interest during construction would be spread over the whole period, and I took the amount of time at five months, halving the ten months' time, at 6 per cent, which would be $2\frac{1}{2}$ per cent. Taxes and insurance at $1\frac{1}{2}$ per cent; contingencies, 2 per cent; legal and organization expenses, 2 per cent; engineering at 5, makes a total of 13. That is the total of the overhead applied here over all the property, with the exception of the land."

From this it is evident that the overhead allowances of Engineer Baldwin were as follows: Interest, $2\frac{1}{2}$ per cent; taxes and insurance, $1\frac{1}{2}$ per cent; contingencies, 2 per cent; legal and organization expenses, 2 per cent; engineering and supervision, 5 per cent; making a total of 13 per cent. The interest, $2\frac{1}{2}$ per cent, was at the rate of 6 per cent per annum applied for $\frac{1}{2}$ of the ten months' period, which Engineer Baldwin testified would be the time necessary to reproduce the plant complete. Defendant raised objections particularly to this rate of 6 per cent per annum, claiming that it ought to be raised to 8 per cent, and that the taxes ought to be increased by $2\frac{3}{4}$ per cent, relying upon the testimony of R. B. Jones, cashier of the People's Bank, as to interest rates, and the testimony of R. M. Munroe that the tax rate in De Soto is 3.34 per cent. R. B. Jones testified: "We are not able to get 8 per cent," and "some of our heavy loans at the bank, our large accounts, are made at 6 per cent," but that the rate on short loans was 8 per cent and above."

Defendant is paying 6 per cent on \$30,000 of bonds, held by its president, and money borrowed for plant investments is not in the nature of a short loan, so we believe that interest during construction should in this estimate be calculated at the rate of 6 per cent per annum, as estimated by Engineer Baldwin. Defendant neglects to state that the tax rate of $3\frac{3}{4}$ per cent applicable in the city of De Soto is on the assessed valuation, and not on

the physical value of the property. As a matter of fact, the assessment list of defendant's property shows that the Consumers Electric Light & Power Company of De Soto was on the 1st day of June, 1912, assessed a total valuation of \$2,500, on which, according to the testimony of defendant's president, the company pays a rate of $3\frac{3}{4}$ per cent. This can hardly amount to a rate of 1 per cent on Baldwin's estimated value, as the assessed valuation is much less than a fourth of the estimated value. Moreover, 6 per cent interest during construction and 1 per cent for taxes may be said to be customary figures in valuations. We therefore conclude that 13 per cent is a reasonable allowance for overhead charges in the estimate of Engineer Baldwin in this case.

Defendant contends that Engineer Baldwin made the mistake of using unit prices which were entirely too low, arguing: "We have seen that he was too low in his estimate of land by any test which can be applied from the evidence, and he was too low in his estimate of the building, and was contradicted in this by the evidence of Mr. Hopson and the appraisal of Mr. Merkle, and according to his own testimony his valuation on the generator was too low; that he neglected to give the company credit of \$400 actually spent in procuring a new franchise; that he failed to take into consideration the local rates of taxes actually existing in this city; that he failed to take into consideration the rate of interest as shown by positive evidence in this case, and with these facts before us we respectfully submit to the Commission that it ought to create some doubt in the minds of the Commission as to whether Mr. Baldwin has allowed sufficient valuation on the plant, and we believe that the other testimony and Mr. Merkle's appraisal is much nearer the fair and reasonable value of defendant's property." But as we have seen in the foregoing, Mr. Baldwin was more liberal than defendant's expert witnesses as to the value of land; his estimate was practically the same as that of Mr. Hopson on the building, when Mr. Hopson's mistakes were corrected, and his valuation on the generator was liberal instead of low, and the local rate of taxes on assessed valuation, when applied to Mr. Baldwin's estimates, gives a result lower than Mr. Baldwin estimated and he did use the correct rate of interest for interest during construction. We are

forced to the conclusion that if Mr. Baldwin's estimates erred in any particular, they erred in being too liberal, instead of being too low.

Equipment not in Use.—Defendant some two or three years ago took out of service two 90-kilovolt-ampere electric generators, together with shafting and belting, and substituted therefor one 150-kilovolt-ampere generator, which has been in use since. The wisdom of replacing these smaller generators with one large one may, from an engineering standpoint, be questionable, as one of the generators which was replaced was apparently of sufficient capacity to carry any but the very heaviest load, and defendant avers that it expects to put these two replaced machines in service again as a reserve. Some such arrangement as this will probably be necessary if defendant in the future furnishes twenty-four hour service instead of fourteen hour service, as then reserve capacity would probably be necessary. But the fact remains that the equipment under consideration is not now in use, and has not been for several years, so we cannot include it with the property "used and useful" in serving the public in estimates of costs which we are to consider in fixing a fair present value of this property.

Cost of Franchise.—It appears that the expenses of the city election granting defendant a new franchise, ordinance No. 1016, passed December 28, 1910, were about \$400, and this sum was paid by defendant.

Section 75 of the public service commission law, which has to do with the approval of the issues of stocks, bonds, and other forms of indebtedness, appears to prevent the capitalization of any franchise, beyond the amount "actually paid to the state or to any political subdivision thereof," and this sum of \$400 appears to be a legitimate cost for defendant to incur, and is doubtless included in the accountant's report. Defendant, however, contends that Engineer Baldwin should add this amount to his estimate of the cost of reproducing the property,—his estimate already includes 2 per cent for legal and organization expenses, which corresponds to about \$640, and which to us appears a reasonable allowance. There is in addition another 2 per cent allowed for contingencies. Original cost and estimates of cost of reproduction should be determined independently, and

not by selecting abnormal items from both, though comparison of items, when possible, may be helpful.

Considering all the evidence in regard to estimates of the cost of reproduction, we find that the estimates of Engineer Baldwin represent the reasonable cost of reproducing the "used and useful" property of defendant company; namely, \$12,604, estimate of the cost of reproduction new; and \$32,354, estimate of the cost of reproduction new less depreciation to present condition.

Going Value.—Defendant did not argue for an allowance for going value, but defendant's engineer, Merkle, included among his estimate of intangibles a sum of approximately \$16,000 as the "cost of developing the business." There was no evidence as to cost of establishing the business, beyond the statement of this in his estimate, and no evidence as to early losses. The evidence shows that defendant company has paid to the holder of its stock an amount of \$31,489.43 in the nineteen years from 1895 to 1913, inclusive, and has besides paid him as holder of the bonds interest at the rate of \$1,800 annually for approximately the same period. The evidence on this point is not entirely clear, but we think it safe to say that \$1,800 bond interest had been paid for nineteen years, amounting to \$34,300, which, added to the sum the owner has drawn from time to time, aggregates over \$75,000, or an average of a little less than \$4,000 a year for nineteen years, besides which replacements in recent years at any rate have been made directly from income. Without attempting to review the decision of courts and Commissions in regard to "going values," since these were thoroughly discussed in *McGregor-Noe Hardware Co. v. Springfield Gas & Electric Co.* case No. 15, before this Commission, the Commission will not attempt to fix a separate and distinct item for going value in this case, but will take "into account the fact that the plant was in successful operation" as a going concern, as stated by the United States Supreme Court in the case of *Cedar Rapids Gas-light Co. v. Cedar Rapids*, 223 U. S. 655, 56 L. ed. 594, 32 Sup. Ct. Rep. 389, in fixing the fair present value of defendant's property for rate making purposes in this case.

VIII. Present Value.—Defendant assumes, and we agree, that there will be no dispute under the general rule to be applied in this case which is: All "the company is entitled to

demand in order that it may have just compensation is a fair return upon the reasonable value of the property at the time it is being used for the public." *San Diego Land & Town Co. v. National City*, 174 U. S. 739, 43 L. ed. 1154, 19 Sup. Ct. Rep. 804; *Smyth v. Ames*, 169 U. S. 466, 42 L. ed. 819, 18 Sup. Ct. Rep. 418; *Home Teleph. Co. v. Carthage*, 235 Mo. 644, 48 L.R.A.(N.S.) 1055, 139 S. W. 547, Ann. Cas. 1912D, 301; *Weaver v. Kirksville Light, Power & Ice Co.* 1 Mo. P. S. C. 149.

Smyth v. Ames, 169 U. S. 466, 42 L. ed. 819, 18 Sup. Ct. Rep. 418, the Supreme Court of the United States says: "In order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under the particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration and are to be given such weight as may be just and right in each case."

We have attempted hereinbefore to ascertain "the original cost of construction," including "the amount expended in permanent improvements," under the heading, "Original Cost," and we have determined the amount, but not the market value of defendant's bonds and stock, this market value being indeterminate; "the present as compared with the original cost of construction," under the heading, "Estimates of the Costs of Reproduction," and take into account the probable earning capacity under the reasonable rates to be hereinafter fixed as maxima, including "the sum required to meet operating expenses" and allowances for return, surplus, contingencies, and depreciation. Taking into account these elements and all other evidences as to value before us in this case, we find that the fair present value of all of the property, tangible and intangible, of defendant, Consumers Electric Light & Power Company, as "used and useful" in supplying electricity for light, heat, and power in the city of De Soto, including all elements of value at the date of September 18, 1914, is the sum total of \$40,000; and an order will be issued fixing said amount as the reasonable present value of defendant's property on said date, for the purpose of fixing maximum rates

for the supply of electricity to be hereafter observed by defendant.

IX. Existing Rates.—The rates of defendant as filed with this Commission come near being a list of special rates for individual consumers, rather than a nondiscriminating schedule of rates uniformly applicable to several proper classes of consumers. The rates as so published and filed are “commercial lighting rates” and “street lighting contract rates,” there being no power consumers, and consisting of (1) “current rate schedule,” (2) “straight meter rate,” (3) “special large lighting rates,” (4) “quasi flat rate,” (5) “flat rates,” (6) “street lighting rates,” which are as follows:

1. *Current Rate Schedule.* These are the maxima prescribed by franchise, as follows:

				Per K. W. Hr
8 K. W. Hrs. or less per month				16¢
Over 8 and including 12 K. W. Hrs.	Per Month			14¢
“ 12 “ “ “	16 “ “ “ “			13¢
“ 16 “ “ “	20 “ “ “ “			12¢
“ 20 “ “ “	25 “ “ “ “			11½¢
“ 25 “ “ “	30 “ “ “ “			11¢
“ 30 “ “ “	40 “ “ “ “			10½¢
“ 40 “ “ “	60 “ “ “ “			10¢
“ 60 “ “ “	100 “ “ “ “			9½¢
“ 100 “ “ “	150 “ “ “ “			9¢
“ 150 “ “ “	200 “ “ “ “			8½¢
“ 200 “ “ “	300 “ “ “ “			8¢
“ 300 “ “ “	450 “ “ “ “			7½¢
“ 450 “ “ “	600 “ “ “ “			7¢
“ 600 “ “ “	1,000 “ “ “ “			6½¢
“ 1,000 K.W. Hours				6¢

The foregoing schedule of rates in declining steps for increasing consumption, shall be subject to an automatic adjustment with next lower rate, so that the total of any customer's monthly bill shall not exceed the lowest chargeable amount in the next succeeding step. The rates in the foregoing schedule are the maximum grantee may charge private consumers entering into a contract for a supply of electric current for a period of one year or more. Grantee, however, has a right to supply electric current service to private consumers at rates other than those specified in the preceding schedule with any person or customer by such person or customer's voluntary consent, provided, however, that any other person or customer desiring service of the same quantity and kind, and using it under the same conditions and terms, shall have the right to demand the same kind of contract. 16 c. p. Carbon Lamp renewals free.

It will be noted that these are the maximum rates under the franchise for yearly contracted service, and that it is provided that they should be uniformly applied. This current rate schedule is a step plan of rates, and objectionable in form in that it requires adjustment as explained above.

2. *Straight Meter Rate.* Straight meter rates are stated as follows:

Straight meter rate applying to any residence or small business house:
\$2.00 minimum and current at 10¢ per K.W. Hour.
\$1.00 minimum and current at 20¢ per K.W. Hour.
(16 C. P. Carbon Lamp renewals furnished free.)

3. *Special Large Lighting Rates.* Special large lighting rates are stated as follows (apparently only one consumer is served under this rate):

For some special large customers a rate of 8¢ flat per K.W. hour is in effect, such customers doing their own repair or trouble work and furnishing their own lamp renewals.

4. *Quasi Flat Rates.* Defendant's statement of these rates is as follows:

A quasi flat rate is in effect with varying minimum depending upon connected loads, with meter to check. Ordinary repairs and lamp renewals free.

"Quasi flat rate" appears to be defendant's name for rates which are apparently combinations of a straight meter rate of 10 cents per kilowatt hour with flat rates, under the guise of monthly minimum charges, ranging from \$2.50 to \$25 per consumer per month, for if the meter indicates consumption in excess of the flat rate (so-called minimum), then the meter rate is applied; otherwise the flat rate.

5. *Flat Rates.* Flat rates were stated by defendant in its schedule on file, as follows:

Covering 10 o'clock Lights (unless otherwise stated).			
9 Customers pay	\$1.60	each for 60 Watt all-night lights.	
3 " "	2.00	for Two 10 o'clock 60 Watt Lamps in Store.	
1 Customer pays	4.70	" Five Stable Lights.	
2 Customers pay	6.00	" Candy Stores.	
1 Customer pays	1.00	" Telephone Exchange.	
1 " "	4.10	" 4 60 Watt lamps and 1 all-night light.	
1 " "	2.00	" 2 " " Stable Lights.	
1 " "	10.00	" Lodge Hall.	
1 " "	2.75	" 6 Residence Lights.	
1 " "	1.50	" 2 Store Lights.	
1 " "	2.50	" 2 100 Watt lamps.	
9 Customers pay	.65	each for 10 o'clock lights.	
10 " "	.50	" " residence lights.	

These flat rates appear to be adjusted on the basis of the wattage of the lamps and on the hours of use, that is, whether they are burned all night or only until 10 o'clock, and also as to whether the use will probably be intermittent or steady. The evidence

is so meager in regard to these flat rates that we are unable to determine whether they are uniform and nondiscriminating. They should, however, be restated by defendant in general terms available to all flat-rate consumers.

6. *Street Lighting Rate.* Under contract with the city, defendant furnishes 221 sixty-watt Mazda lamps on a modified "Philadelphia moonlight schedule" for the compensation of \$250 per month. In connection with the other rates we have had occasion to examine this rate, and it appears to be a reasonable contract.

Some of the rates listed above provide for free renewals of carbon filament lamps, others require the consumer to pay for all lamp renewals. The rules and regulations adopted by this company are stated as follows:

Send out bills monthly.

No cash discount.

Ordinary rules as usually applied to any business.

Data was supplied by defendant's engineer, Merkle, which the Commission has found very valuable in the consideration of this case, and which reflects credit upon the industry of defendant's engineer in preparing and tabulating the records of the operation of the rates, which contain the rate, the number of kilowatt hours as shown by the meter per month, and the monthly bill for each consumer. From this data we have determined, and here state as briefly as possible, the application of the existing rates in the year 1913: Of 285 consumers (service connections) four consumers were charged at the rate of 20 cents per kilowatt hour, with monthly minimum bills ranging from \$1.50 to \$4.50 per month; thirty-nine consumers at the rate of 20 cents per kilowatt hour, with minimum and meter rent of \$1.25 per month; one consumer at the rate of 20 cents per kilowatt hour, with no minimum charge; one consumer at the rate of 15 cents per kilowatt hour, with a minimum and meter rent of \$1.75 per month; one consumer at the rate of 15 cents per kilowatt hour, with no minimum; fifty-eight consumers at the rate of 10 cents per kilowatt hour, with minimum and meter rents ranging from \$2.50 to \$25 per month; 136 consumers at the rate of 10 cents per kilowatt hour, with a minimum and meter rent of \$2.24

per month; one consumer at the rate of 10 cents per kilowatt hour, with a minimum and meter rent of \$1.25 per month; two consumers at the rate of 10 cents per kilowatt hour, with no minimum; one consumer at the rate of 8 cents per kilowatt hour, with no minimum; eight consumers were charged according to the current rate schedule; thirty-three consumers were charged flat rates.

Considering the rates for commercial lighting with the results of their application, and excepting the current-rate schedule and the flat rates, the general underlying idea appears to have been to attempt to apply the scheme "what the traffic will bear" to individual consumers, at least to a part of them; and perhaps also to make adjustment from time to time to carry out this idea. This kind of policy has been discarded by companies in practically every line of business, even where there is free competition and no regulation, it having been found advisable to so adjust prices that they will at least appear fair, just, uniform, and non-discriminatory. There appears little doubt that the policy of this company, together with the decrease in population and business in De Soto, as is in evidence by the witnesses presented by defendant, has retarded rather than developed the business of supplying electricity in the city of De Soto, the demand for electricity there being remarkably low, and in fact remaining practically at the same level for the past five years.

X. Discrimination.—With the exception of the current-rate schedule, which is applied to only eight consumers, and possibly also the flat rates, the existing rates of defendant for commercial lighting furnish instances of arbitrary classification and unjust discrimination at every turn. Consumers in the same class are charged at the different rates of 10, 15, and 20 cents per kilowatt hour. Minimum charges are assessed ranging from nothing to \$25 a consumer a month. It is not clear from the evidence that consumers may have their choice between the different rates on file, though it appears that residence consumers may choose between the 10-cent rate with monthly minimum and meter rental of \$2.25 and the 20-cent per kilowatt meter rate with the \$1.25 minimum and meter rental charge. In 1913 thirty-nine consumers were charged the latter rate and 136 consumers the former.

Quasi flat rates appear to be specially adjusted for each con-

sumer; that is, the flat rate part (the so-called minimum charge). As the range is so large and there are so many different maxima, it is needless to multiply instances of discrimination, many of which are evident upon inspection of defendant's statement of the different rates.

The accountant reports, "No charge has been made for light supplied to Mr. Munroe's residence, nor to the Jefferson County Bank, which institution is owned by him." We consider it unjust discrimination for this corporation to furnish electricity free to its stockholders, or any other consumer. All the consumers of electricity should pay their just proportion of the income of defendant.

XI. Minimum Monthly Bill.—Including meter rent with the minimum charge, it appears that minimum charges were assessed as follows in the year 1913:

6 metered consumers, no minimum charge.				
40	"	"	minimum charge	\$ 1.25 each
1	"	consumer	"	1.50
3	"	consumers	"	1.75
136	"	"	"	2.25
5	"	"	"	2.50
2	"	"	"	2.60
3	"	"	"	3.00
5	"	"	"	3.25
2	"	"	"	3.50
1	"	consumer	"	4.00
2	"	consumers	"	4.25
7	"	"	"	4.50
1	"	consumer	"	5.00
3	"	consumers	"	5.25
1	"	consumer	"	6.25
3	"	consumers	"	7.25
3	"	"	"	7.50
1	"	consumer	"	8.25
3	"	consumers	"	9.00
1	"	consumer	"	9.25
1	"	"	"	10.00
1	"	"	"	10.25
3	"	consumers	"	10.50
1	"	consumer	"	11.00
1	"	"	"	12.00
1	"	"	"	14.00
1	"	"	"	14.25
1	"	"	"	15.00
1	"	"	"	17.30
2	"	consumers	"	25.00

We think these minima are unreasonable and unjustly discriminatory, and in violation of § 68 of the public service commission law, which provides, among other things: "No gas corporation, electrical corporation, water corporation, or municipi-

pality shall directly or indirectly by any special rate, rebate, drawback, or other device or method, charge, demand, collect, or receive from any person or corporation a greater or less compensation for gas, electricity, water, or for any service rendered or to be rendered or in connection therewith, except as authorized in this act, than it charges, demands, collects, or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions."

It, however, appears to the Commission as reasonable to allow defendant to charge a reasonable minimum monthly bill to consumers who use little or no electricity in any one month, otherwise, the other consumers would have to pay the cost of serving the minimum consumers. Such a minimum monthly bill should be reasonable and uniformly applied to the consumers of the several classes, and should be based on the average cost of serving consumers paying the minimum bill. The average cost of serving the minimum consumers, as determined from the evidence in this case, is as follows:

Meter maintenance	\$.50 per year
Commercial expense, reading meters, bookkeeping, collecting accounts	2.00 " "
Taxes on the cost of meter and service	.19 " "
Interest on cost of meter and service	1.11 " "
Depreciation on cost of meter and service	.93 " "
Total \$4.73 per year, or 39 cents per month, each.	

To this should be added the average kilowatt hour consumption per month of minimum consumers, which we find to be approximately two and one-half kilowatt hours, at the price, say, of 15 cents per kilowatt hour, making 37 cents, which added to 39 cents already determined, gives a total of 76 cents as the average cost of service for minimum consumers.

As defendant has no power consumers, it appears reasonable to classify all the consumers under two classes; namely, "residence-lighting consumers" and "business-lighting consumers." With this classification, and on the basis of the above calculation of the average cost of service, we think the reasonable minimum bill is 75 cents per month for residence-lighting consumers and \$1 per month for business-lighting consumers, the latter amount being larger on account of the larger average size of installation

and meters and the somewhat larger average consumption of business-lighting consumers. Examination of the consumers' data shows a remarkably small number of consumers who have been charged a minimum bill of 75 cents or \$1 per month in the year 1913, approximately twenty-five minimum bills out of over three thousand bills rendered in that year.

XII. Meter Rent.—Defendant charges for meter rent 25 cents per month, contending that this is allowed by its franchise and that it is not unreasonable or unlawful. We have hereinbefore arrived at the reasonable minimum monthly bill for residence and business lighting on the basis of the cost of serving the minimum consumer. We have heretofore considered meter rental in case No. 132, *J. W. Brown v. Lawrence County Water, Light & Cold Storage Co.* 1 Mo. P. S. C. 582, finding in that case "that meter rental is an unjust and unreasonable charge and contrary to law." In the present case meters have been included as part of the investment of the company on which it is entitled to a return, and defendant should not, in addition, expect a second return on this item of investment by way of a charge for meter rent. We find it unjust, unreasonable, and unlawful for defendant to make any charge for meter rent over and above the minimum charges and the reasonable rates to be hereinafter prescribed as maximum rates.

XIII. Operating Revenues and Operating Expenses.—The report of the accountant as to operating revenues and operating expenses for the past five years needs little criticism, and defendant presented no evidence to controvert this report. Study of the revenues and expenses shows there has been very little variation from year to year during the past five years, with the exception of the year 1912, and consequently the operating revenues and operating expenses for the year ending December 31, 1913, appear to be the normal or average revenues and expenses, and the proper basis for fixing maximum rates to be applicable in the future. Furthermore, defendant's engineer analyzed the individual consumer's account for this same year, making it possible to determine the effect on income of different schedules of rates by applying them to his analysis.

The total revenue for the year 1913 was \$16,223.89 and the

total operating expenses were \$9,608.97, as shown in the following profit and loss account reported by the accountant:

Consumers Electric Light & Power Company.

Profit and Loss Account for the Year Ending December 31, 1913.

Revenues:

Commercial Lighting	\$12,317.15
Street Lighting	3,000.00
Pole Rents	60.50
Lamp Sales	356.34
Wiring and Miscellaneous	489.90

Total Revenue	\$16,223.89
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Expenses:

Fuel Purchased	\$1,461.77
Freight on Coal	1,243.57
Unloading Coal	117.92
Oil and Waste	76.96
Labor and Superintendence	3,569.63
Rent	205.00
Insurance	258.77
Taxes and Licenses	242.32
Lamp Purchases	647.56
General Expense	1,475.01
Wiring Material and Miscellaneous	310.46

Total Operating Expenses	\$9,608.97
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Net Profit on Operations	\$6,614.92
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Deductions from Income:

Interest on Bonds	\$1,800.00
Interest on Demand Loans	150.00

\$1,950.00

Net Profit Transferred to Surplus	\$4,664.92
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Examination of the profit and loss account shows that in the revenues are included income from the sale of lamps and from wiring and miscellaneous, and in the cost is included the purchase of lamps, the cost of wiring material, and the labor of doing this wiring, so all of the operations of defendant, not only the supply of electricity, but the furnishing the lamps and the business of wiring houses, is included in the profit and loss account, and it is practically impossible from the information available to separate these items.

Results of analysis of the revenue from commercial lighting made by defendant's engineer, Merkle, and checked approximately by comparing with data obtained by Accountant Whitaker, showing groups of consumers, number in each group, the revenue for the year 1913, the average kilowatt hours per month per

consumer, and the average rate per kilowatt hour paid by the consumers in each group, appear in the following table:

Analysis of 1913 Revenue.

Group.	Number of Consumers in Each Group.	1913 Revenue at Existing Rates.	Average Kilowatt Hrs. per Month Per Consumer.	Average Rate for Consumers in Each Group—Cts. per Kilowatt Hour.
Churches	9	\$ 363.00	11.2	29.6
Residences	150	3,468.55	11.3	17.2
Barbers	3	135.50	27.1	13.9
Miscellaneous	27	1,381.17	27.6	15.4
Stores	40	2,727.76	49.9	11.4
Theatres	3	185.28	60.	8.6
Halls	9	1,042.53	83.9	11.3
Saloons	7	837.35	94.3	10.6
Hotels	5	599.45	95.9	10.4
Flat Rate Consumers	33	1,576.56		
	286	\$12,317.15		
Street Lighting		\$ 3,000.00	35.00	7.1
Pole Rents		60.80		
Lamp Sales		356.34		
Wiring and Miscellaneous ..		489.90		
		\$16,223.89		

The average rate received by defendant in the year 1913 for commercial lighting was approximately 13 cents per kilowatt hour (\$12,317.15 for approximately 94,000 kilowatt hours), and the average rate for all lighting, including street lighting, was approximately 11 cents per kilowatt hour (\$15,317.15 for approximately 136,000 kilowatt hours).

We have scrutinized carefully the operating expenses, totaling \$9,608.97, as shown in the foregoing profit and loss account, and do not find any items which appear unreasonable or in which there has been any abnormal change from year to year. These operating expenses do, however, include the cost of lamps purchased for sale, and the cost of wiring material, and the labor used for wiring, but the income from these sources has also been included in the revenue. So, we believe that this is a reasonable sum for operating expenses for the year 1913, and which will probably not need to be increased within the next three years, as

defendant has presented evidence to the effect that no increase in business is to be expected in the immediate future.

XIV. Rate of Return and Allowance for Surplus and Contingencies, Including Depreciation.—Defendant contends for an allowance of 10 per cent rate of return on fair present value and also for an allowance of 5 per cent for depreciation. Section 82 of the public service commission law provides, among other things, the following: "In determining the price to be charged for gas, electricity, or water the Commission may consider all facts which in its judgment have any bearing upon a proper determination of the question, although not set forth in the complaint and not within the allegations contained therein, with due regard, among other things, to a reasonable average return upon capital actually expended and to the necessity of making reservations out of income for surplus and contingencies."

In two former cases we have decided that at least 7 per cent of return on fair present value is sufficient to provide a "reasonable average return," and as there appears considerable risk in this case and little chance for abnormal profits, and as there have been included in the operating expenses such items as "insurance," "taxes," and "license fees," we think that 8 per cent is a sufficiently liberal allowance in this case.

Considering "the necessity of making reservations out of income for surplus and contingencies," this company has in the past made no reservations from income for either surplus or contingencies, but has from time to time paid over to the sole owner sums of money which had accrued, with the exception that some replacements have been made directly from income. There appears no question but what it is a wise business policy on the part of a public utility corporation, as well as to the benefit of the public, to make reservations for surplus and contingencies, as there are liable to be fluctuations in this, as in other businesses, and particularly as some depreciation is inevitable, especially as parts of this plant have been in operation for nearly twenty-four years. There is practically no evidence in this case on which to base an allowance for surplus and contingencies, including depreciation, and probably we will not be able to secure satisfactory evidence as to this allowance, except on data which can be collected in the future showing the necessary amount to

set aside for these items based on experience and uniform accounting records. Consequently, we believe that 5 per cent on the fair present value is certainly a liberal allowance in this case. Taking these two together, it is really an allowance of 13 per cent for return, surplus, contingencies, and depreciation.

XV. Reasonable Income.—The reasonable income, that is, the amount which will provide for the operating expenses, \$9,600 in round numbers, and also for the return and allowance for surplus, contingencies, and depreciation of \$5,200, being 13 per cent on the fair present value of \$40,000, as hereinbefore determined, is the sum of \$14,800 a year, based on the business of the year 1913. As we have seen, the company actually received in the year 1913 \$16,223.89, which exceeds the reasonable income about \$1,400, in round numbers, which justifies only a small reduction, approximately 9 per cent, in the income and in the rates.

XVI. Reasonable Rates.—Defendant submitted a schedule of rates which it contended were reasonable, and would produce practically the same income as heretofore, as follows:

Rate Schedule "D."									
Minimum monthly charge				residence	\$1.00				
" " " "				all others	2.00				
First	8	K. W.	Hrs.	per month	16¢	per	K. W.	Hrs.	
Next	12	"	"	" "	14¢	"	"	"	
"	30	"	"	" "	12¢	"	"	"	
"	50	"	"	" "	10¢	"	"	"	
"	150	"	"	" "	8¢	"	"	"	
"	150	"	"	" "	6¢	"	"	"	
"	200	"	"	" "	5¢	"	"	"	
All over 600 K. W. Hrs.					4¢	"	"	"	

These rates are approximately the same as the current rate schedule now on file by this company, but which few consumers use. These are "block" rates, similar to those on file with this Commission by a number of electrical corporations within this state, and probably will prove to be more readily understood and applied than the "hours-use" schedule which we adopted in the Kirksville Case, 1 Mo. P. S. C. 149, while embodying practically the same basic principles. By applying several different schedules of "block" rates to the 1913 business of defendant, we have determined that the following schedule of rates will produce an income somewhat in excess of the reasonable income of \$14,800:

Schedule of Maximum Rates for Consumers Electric Light & Power Company,
De Soto, Missouri.

Meter Rates.

General Lighting and Power Available for All Consumers.

For the first 20 kilowatt hours used per month 15¢ per K. W. Hr.

For the next 20 kilowatt hours per month 12¢ " " "

For all in excess of 40 kilowatt hours used per month 8¢ " " "

Subject to 10% discount for prompt payment, within ten days from date of bill.

Subject also to a minimum monthly bill of 75 cents per month for residence lighting consumers and \$1.00 per month for business lighting consumers, that is, all consumers other than residence consumers.

Flat Rates.

The existing rates on file subject however to a restatement of them, so as to be uniformly applicable to flat rate consumers.

Street Lighting Rates.

The existing rates under contract with the city of De Soto.

We have determined, by applying this "schedule of maximum rates" to the business of defendant in the year 1913, that the total revenue would amount to \$14,913.98, as shown in the following table, which also shows the number of consumers in each group, the average kilowatt hours per month per consumer, and the actual revenue received under the existing rates in 1913:

Group.	No. Consumers.	Average K. W. H. Per Month Per Consumer.	1913 Revenue Under Existing Rates.	Revenue by Applica- tion of Schedule of Maximum Rates to Business of 1913.
Churches	9	11.2	\$ 363.00	\$ 185.47
Residences	150	11.3	3,468.55	3,251.56
Barbers	3	27.1	135.50	122.04
Miscellaneous	27	27.6	1,381.17	1,071.36
Stores	40	49.9	2,727.76	2,479.37
Theatres	3	60.	185.28	175.18
Halls	9	83.9	1,042.53	870.22
Saloons	7	94.3	837.35	771.98
Hotels	5	95.9	599.45	503.50
			\$10,740.59	\$ 9,430.68
Flat Rate Consumers	33	No data	1,576.56	1,576.56
Street Lighting		3500	3,000.00	3,000.00
Pole Rents, Lamp Sales, Wiring and Miscel.			906.74	906.74
			\$16,223.89	\$14,913.98

Service Rules.—Defendant heretofore had practically no service rules. Its statement of its rules and regulations being as

follows: "Send out bills monthly;" "no cash discount;" "ordinary rules as usually applied to any business." It is of interest to both defendant and the public that rules of service should be published and definitely known. The accountant's report shows that defendant had a number of bills unpaid and probably not collectable; so a reasonable rule for discontinuing service and a reasonable rule for personal security or guaranty deposit is evidently advisable not only to defendant company, but also to the public generally, as each consumer should pay the amounts he owes the company under reasonable rates. The rate department of this Commission has a draft of service rules which has not yet been adopted by the Commission, but which may be of aid to defendant in arriving at reasonable service rules. Defendant will be allowed to adopt reasonable service rules and submit them to the Commission for approval.

XVII. Conclusions.—After a full consideration of all the evidence in this case, the Commission finds as a fact that the fair present value for determining reasonable and just rates, in this case, of all the property of defendant used and useful in supplying electricity in the city of De Soto, as of the 18th day of September, 1914, considering said plant as a going concern, and taking into account the fact that it is in successful operation, and including engineering, supervision, interest during construction, organization, and general expenses, legal expenses, contingencies, insurance, general contractor's profit, promotion, and other development expenses, working capital, and including all other elements of value, tangible and intangible, as used in the public service in supplying electricity at De Soto by said defendant, Consumers Electric Light & Power Company,—is the sum of \$40,000, which said sum is hereby fixed and determined by the Commission to be the fair present value of said property, as of said date, for the purpose of determining reasonable and just rates in this case.

The Commission further finds as a matter of fact and after full consideration of all the evidence that the rates and prices charged by defendant, Consumers Electric Light & Power Company, for electricity at De Soto, are unjust and unreasonable, unjustly discriminatory, and unduly preferential.

The Commission further finds that the maximum prices to be

charged by said company, in order to be nonpreferential, should be fixed upon a sliding scale with maximum prices for the various amounts of electricity furnished to consumers thereunder, without disturbing the existing flat rates and street lighting rates.

In determining the maximum rates to be charged for electrical energy of said Consumers Electric Light & Power Company, the Commission has duly considered all of the facts brought to its attention by either complainants or defendant, and has exercised due regard, among other things, for a reasonable average return upon the capital actually expended by said Consumers Electric Light & Power Company, and for the necessity of making reservation out of income for surplus and contingencies, as required by the provisions of the public service commission law.

The Commission finds it unnecessary to provide separate schedules of rates for different classes of residence and business lighting consumers, as the present consumers are all lighting consumers, and one schedule of block rates will be sufficient for these two classes, with, however, separate provisions for minimum monthly bills for residence-lighting and business-lighting consumers.

The Commission further finds that the operating revenues for the year ending December 31, 1913, were \$16,223.89, and that the reasonable income amounts to \$14,800. These findings justify only a small reduction, approximately 9 per cent below the 1913 income, and approximately the same per cent reduction in the rates considered as a whole.

The sales of electricity by defendant are relatively very small indeed, and this may be in part due to the existing rates, but we have not considered reducing the rates for the purpose of meeting or causing an increase in business of defendant; such an increase is in the immediate future doubtful.

The Commission finds that the schedule of maximum rates, 15, 12, and 8 cents per kilowatt hour, with 10 per cent discount for prompt payment, and monthly minimum bill of 75 cents for residence lighting, and \$1 for business lighting, as hereinbefore set out in detail, are the reasonable and just rates to be observed by defendant as the maximum rates for the sale of electricity in the city of De Soto by defendant, Consumers Electric Light & Power Company.

The existing schedules of rates of defendant company now in force are very discriminatory and imperfect. Some of the rates are unreasonably high and unjust, and others are low and unduly preferential, as hereinbefore stated. The reasonableness of the schedule of maximum rates herein prescribed can best be determined by actual use of them by defendant company. If the new rates work an injustice, the Commission has it in its power at any time to revise the rates herein prescribed, and recoup any losses which might occur by reason of the application of the schedule of rates as prescribed in this case. In order that the Commission may be kept definitely informed as to the results of the prescribed rates, the defendant should be required to keep correct records in detail of its revenues and operating expenses from month to month in conformity to the rules for uniform accounting adopted by the Commission in general order No. 12, and report them promptly to the Commission.

An order should be entered in conformity with the views expressed herein.

H. B. Shaw, Commissioner. Atkinson, Chairman, and Kenish and Wightman Commissioners, concur; Bean, Commissioner, not sitting.

ORDER.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed its report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

Now, upon the evidence in this case, and after due deliberation, it is—

Ordered: 1. That the Commission, upon a full consideration of all the evidence in this case, finds as a fact that the fair present value for determining reasonable and just rates in this case of all of the property of defendant, Consumers Electric Light & Power Company, as of date September 18, 1914, including all of the plant used and useful for the generation and supply of electricity, considering said plant as a going concern, and taking into account the fact that said plant is in successful operation, and including engineering, supervision, and interest during con-

struction, organization, and general expenses, legal expenses, contingencies, insurance, general contractor's profit, promotion, and other development expenses, working capital, and including all other elements of value, tangible and intangible, as used in the public service in supplying electric energy at De Soto by said defendant, Consumers Electric Light & Power Company, is the sum of \$40,000, which said sum is hereby fixed and determined by the Commission to be the fair present value of said property as of said date for the purpose of determining reasonable and just rates in this case.

Ordered: 2. That the rates and prices charged by defendant, Consumers Electric Light & Power Company, for electric energy within the city of De Soto, are unjust and unreasonable, and that said rates and prices so charged by it are too great, and that the schedule of said rates and prices is unjustly discriminatory and unduly preferential in its actual working.

Ordered: 3. That defendant, Consumers Electric Light & Power Company, cease and desist making unjust and unreasonable charges for electricity, and that it cease unjust discrimination between its patrons, both in the rates and in the minimum charges, and that it cease the unjust and unlawful charge for meter rent.

Ordered: 4. That defendant, Consumers Electric Light & Power Company, prepare and file a restatement of its flat rates in the form of a schedule available to all flat-rate consumers, uniformly applicable under like conditions and circumstances.

Ordered: 5. That the just and reasonable maximum prices for electric energy to be charged by defendant, Consumers Electric Light & Power Company, for all classes of service to be furnished in the city of De Soto, are as follows:

Meter Rates.

General Lighting and Power Available for all Consumers:

For the first 20 kilowatt hours used per month, per kilowatt hour	15 cents
For the next 20 kilowatt hours used per month, per kilowatt hour	12 "
For all in excess of 40 kilowatt hours used per month, per kilowatt hour	8 "

Subject to 10% discount for prompt payment, within 10 days from date of bill.

Subject also to a minimum monthly bill of 75 cents per month for residence lighting consumers and \$1 per month for business lighting consumers, that is, all consumers other than residence consumers.

Flat Rates.

The existing rates on file subject however to a restatement of them, so as to be uniformly applicable to flat rate consumers.

Street Lighting Rates.

The existing rates under contract with the city of De Soto.

Ordered: 6. That the prices and rates hereinbefore fixed shall be the maximum price to be charged by defendant, Consumers Electric Light & Power Company, for electric energy in the city of De Soto for a period of three years from February 1, 1915, and thereafter until changed or abrogated by the Commission as provided by statute.

Ordered: 7. That the rates and charges herein fixed shall apply to all bills for electric energy sold and delivered solely after February 1, 1915, but shall not apply to bills for electric energy in part sold and delivered prior to February 1, 1915.

Ordered: 8. That on or before February 1, 1915, defendant, Consumers Electric Light & Power Company, submit to this Commission proposed service rules in regard to prompt payment, discounts, security deposits, and discontinuance of service, etc.

Ordered: 9. That defendant, Consumers Electric Light & Power Company, keep true and correct records of its income and operating expenses in detail, from month to month, and file a monthly balance sheet with the Commission, duly verified by its secretary and treasurer, setting forth fully such income and operating expenses in conformity to the uniform accounting system established by this Commission in its general order No. 12, and that said reports begin with February 1, 1915, and continue until otherwise ordered by this Commission.

Ordered: 10. That complainants and defendant, Consumers Electric Light & Power Company, be at liberty at any time after an actual test of the rates fixed herein has been made to apply to the Commission by motion or supplemental petition, upon such proof as either may desire, and upon reasonable notice to said complainants or defendant, for a modification or revision of the rates and charges prescribed herein, if found to be unreasonable or unjust to the public or said defendant, or shall fail to provide a fair and just return on the fair present value of defendant's property as fixed herein.

Ordered: 11. That this order shall take effect on February 1, 1915, and that the secretary of the Commission forthwith serve

on complainants and defendant, Consumers Electric Light & Power Company, certified copies of this order and the report filed herein.

Ordered: 12. That defendant, Consumers Electric Light & Power Company, be and it is hereby required to notify the Commission, in the manner required by § 25 of the public service commission law, within five days after receipt of a certified copy of this order and the report filed herein, whether the terms of this order are accepted and will be obeyed.

By the Commission.

On January 28, 1915, a motion for a rehearing and modification of the order in the above-entitled case was overruled, and the order was made effective on the same date.

Note.—Favorable location as a factor in valuation.

The question whether the favorable location of a public utility may be capitalized presents a twofold aspect, —the first brings up the question of the community to be served; and the second, the factor of the cost of construction and operation or, as it has been called, the strategic location.

There seems to be a tendency on the part of the authorities to make some allowance in valuation, where the location of the plant in respect to the community to be served, is favorable; while, on the other hand, the view generally taken is that no allowance in valuation should be made for a favorable location of the utility in respect to the cost of construction and operation.

Thus, in *Monongahela Nav. Co. v. United States*, 148 U. S. 312, 37 L. ed. 463, 13 Sup. Ct. Rep. 622, which was a proceeding under an act of Congress for the condemnation of a lock and dam on the Monongahela river, Justice Brewer in delivering the opinion of the court says: "The commerce on the Monongahela river, as appears from the testimony offered, is great; the demand for the use of this lock and dam constant. A precisely similar property in a stream where commerce is light would naturally be of less value, for the demand for the use would be less. The value, therefore, is not determined by the mere cost of construction, but more by what the completed structure brings in the way of earnings to its owner."

And in the *Metropolitan Trust Co. v. Houston & T. C. R. Co.*, 90 Fed. 683, Circuit Judge McCormick holds that the Railroad Commission erred in making no allowance for the favorable location of the railroad property "in view of the advance of the prosperity of the country through which it runs."

So, also, in *Fuhrmann v. Cataract Power & Conduit Co.* (1913) 3 P. S. C. R. (2d D. N. Y.) 656, the New York Commission says: "There must always be taken into consideration in these matters the location of the plant and the business, either present or prospective, which may be served at such location. The plant of the Cataract Company is located in Buffalo, because there is business there which may be served, or there is potential business in that city which it is more than probable will be served; and the value of the plant, either exchange value or investment value, depends upon the existence of customers to be served."

Again, in *San Joaquin & K. River Canal & Irrig. Co. v. Stanislaus County*, 191 Fed. 875, in discussing the value of a water and irrigation plant, the court, after mentioning certain elements, said: "Then there are other questions which enter into the value of such a plant, if it were offered for sale; as, for instance, whether the plant is an economical system rendering an efficient and satisfactory service in the distribution of water to the consumers; whether the lands to be irrigated are of the quality to make irrigation profitable and certain; and, generally, whether all the conditions are favorable for the business of distributing water in the locality where the plant is established."

Where extensive branch lines are constructed through new and unsettled sections of the state at great expense, owing to the swampy country, and are built principally to serve as feeders for the main lines, and to enable the roads to obtain shorter lines for their interstate traffic which merely passes through the state, the companies are not entitled to as great a compensation from intrastate business, on their investments therein, as upon the investment in ordinary roads built for the accommodation of intrastate as well as interstate business. *Re Arkansas R. Rates*, 168 Fed. 732.

And in *Matthews v. Corporation Comrs.* 106 Fed. 7, the court said that the basis of all calculations as to the reasonableness of rates is the fair value of the property,—not its cost nor the amount of money invested, but its value as a producing factor, taking into consideration the location through which it passes and the reasonable expectation of business coming to it.

On the other hand, the Missouri Commission, in holding that no allowance should be made for the favorable location of the plant with reference to receiving its coal (see page 967, ante), is in line with the authorities which for the most part hold that no allowance in valuation should be made because of the favorable location of the plant in respect to cost of construction and operation.

Thus, in *Brunswick & T. Water Dist. v. Maine Water Co.* 99 Me. 371, 59 Atl. 537, the court, in holding that a community was entitled to the benefit of such natural and sufficient facilities for procuring pure water as exist in its vicinity, said: "If there is more

than one source of supply, other things being equal, the community is entitled to have the least expensive one used. So long as the company enjoys exclusive franchises, so long it must afford the community the benefit of the conditions which nature has provided for them. For instance, if water can profitably be served from a nearer source of supply, at a certain rate, the company ought not to be permitted to charge a higher rate based upon the expense of bringing it from a farther and more expensive source. And this, even if in attempting to serve this and other communities together, it might be more profitable to the company to do so."

So, in *Spring Valley Waterworks v. San Francisco*, 192 Fed. 137, Farrington, J., in discussing the argument of the water company that as it had the only available source near at hand, its plant was worth as much as it would cost to construct a plant which would bring an adequate supply from a much greater distance, said: "Under this thin disguise, it is easy to recognize the old and familiar doctrine that he who has a monopoly is entitled to charge what the rate will bear." See also an earlier opinion in the proceedings between the same parties, by the same judge, reported in 165 Fed. 667.

In *South Dakota*, the view is taken that the advantage due to strategic location should not be taken into consideration for the purpose of arriving at the value of a railroad company's property. See 21st Annual Report of the Board of Railroad Commissioners of South Dakota (1910) page 28.

In *Ripon v. Ripon Light & Water Co.* (1910) 5 Wis. R. C. R. 1, the Commission, at pages 12 and 13, said that while expenditures incurred in making a wise selection or an increased price because of favorable features are properly chargeable to capital, it does not follow that the exercise of such intelligence as is reasonably to be expected under the circumstances in selecting the location should be capitalized, and the Commission refused to make any allowance because of the fact that the only available water supply of the city was an underground stream tapped by the company's wells.

Whitten in his work on "Valuation of Public Service Corporations," at page 52, says that favorable location also adds to fair value for rate-making purposes under the market value theory, and some conceptions of this theory would capitalize all monopolistic advantages arising from favorable location, since rates charged by a competitor, to be remunerative, would necessarily have to be higher because of greater cost of construction, and that remunerative rates for this possible competitor should serve to fix the rates of the existing road; but the learned author criticizes this view and says: "The net returns under rates thus fixed will be capitalized to fix the market value, and this market value may be greatly in excess of either the actual cost or the cost of reproduction. But by this method the rates are determined before the market value is found, and therefore the determination of market value is in fact unnecessary."

The learned author goes on to say: "The monopoly value arising from favorable location is not usually claimed for utilities other than railroads. It is somewhat similar to the claim that location in the city streets under a franchise can be capitalized for rate-valuation purposes. A closer parallel, however, is the case of a water-supply plant that has secured the most economical source of supply. Any competing company would have to obtain a supply from a much more distant source, thus greatly increasing the capital cost. It has been claimed that in a rate case the fair value of the water plant is not its cost, but the greater cost of the new plant. This claim was denied by District Judge Farrington in his opinion in *Spring Valley Waterworks v. San Francisco*, 192 Fed. 137, decided October 21, 1911. . . . It is inconsistent with what is believed to be the governing principle of justice and equity which forms the basis of public service control, that rates should be increased in order to pay a return on the capitalized value of exclusive location or other monopoly advantage that represents no actual investment. A railroad exercises the right of eminent domain to secure its location, and the right of eminent domain can only be lawfully exercised for a public purpose. The location secured by this method for a public purpose cannot justly create a monopoly that will be capitalized against the very public purpose that it was intended to serve,—the transportation of freight and passengers."

ARIZONA CORPORATION COMMISSION.

ARIZONA CORPORATION COMMISSION

v.

PACIFIC GAS & ELECTRIC COMPANY.

[Docket 225.]

Service — Gas and electric — Extension of mains and wires.

A gas and electric company was ordered to extend its mains and service wires into a newly developed addition within the city limits where fourteen residences of a substantial type were either in the course of construction or completed, it appearing that the construction of additional houses and occupancy of the present houses would be delayed, if not absolutely defeated, unless such service was rendered.

Monopoly and competition — Service — New districts.

A public service corporation occupying an exclusive field should hold itself in readiness to make reasonable extensions to serve new districts.

Monopoly and competition — Protection of exclusive occupation of field.

A public service corporation is entitled to protection against the occupancy of an exclusive field when a disposition is shown to hold itself in readiness to make reasonable extensions to serve new districts.

[March 1, 1915.]

COMPLAINT as to refusal of a gas and electric company to extend its service into a certain addition within the city limits; extension ordered.

By the **Commission**: This is a complaint instituted by the Arizona Corporation Commission on its own initiative, based upon informal complaint of property owners and others interested in what is known as Oakland addition in the city of Phoenix, wherein it is alleged that the Pacific Gas & Electric Company, a public service corporation, has refused to serve said addition and the residents thereof with electric and gas service.

A hearing was had, the respondent appearing by its manager. A number of property owners also appeared and testified. It appears from the evidence that Oakland addition is a tract of land located in the northwestern part of Phoenix, within the city limits; that improvements, such as street grading, sidewalks, curbs, and other improvements have been made.

It appears that there is, either in the course of construction or completed, some fourteen residences of a substantial type; that the owners of said residences, prospective investors, and owners of vacant lots, assert that the lack of gas and electric service in this district prevents, and has prevented, the sale of property and the occupancy of residences, and otherwise has retarded the development of the Oakland addition.

Respondent does not deny the material facts presented, but claims that the extension of their gas mains and service wires will require the expenditure of more money than would be justified from the number of houses now located in said addition.

It appears that the construction of additional houses, and the occupancy of present houses, will be delayed, if not absolutely defeated, until such service is rendered.

The Commission is of the opinion, from the record, that it is

is not unreasonable to require the respondent to extend its service into this addition. A public service corporation occupying an exclusive field, such as presents itself in this instance, should hold itself in readiness to make reasonable extensions to serve new districts. The Commission is of the opinion that a company is entitled to protection against occupancy of an exclusive field when a disposition is shown to comply with the foregoing principle.

It is therefore ordered that the Pacific Gas & Electric Company be, and it is hereby, ordered to extend its gas and electric service, and to serve houses now constructed, and to be constructed, in said Oakland addition, Phoenix, and that said extension should be completed not later than April 1, 1915.

Arizona Corporation Commission, F. A. Jones, Chairman; A. W. Cole, W. P. Geary, Commissioners.

IDAHO PUBLIC UTILITIES COMMISSION.

GREAT SHOSHONE & TWIN FALLS WATER POWER COMPANY

v.

IDAHO POWER & LIGHT COMPANY.

[Case No. F-72; Order No. 209.]

Service — Restraining order — Filing of schedules — Condition precedent.

A power and light company was ordered to refrain from soliciting or contracting for electrical energy for commercial cooking and power purposes in excess of 15 horse power of connected load until such time as its schedules of rates were duly filed with the Commission; it appearing that such company had failed to comply with a former order requiring the filing of rates, and was therefore in default; that its present schedules applied to only a portion of the service rendered; and that no schedules had been filed for certain towns in which service was offered.

[March 1, 1915.]

APPLICATION of one power company to compel another power company to file rate schedules with the Commission, and asking that such other company be temporarily enjoined from soliciting certain contracts; relief asked for granted.

By the Commission: Now on this 1st day of March, 1915, this cause came on for hearing before the Public Utilities Commission of the State of Idaho, upon the application of the Great Shoshone & Twin Falls Water Power Company, to require the defendant, the Idaho Power & Light Company, a corporation, to file with this Commission a schedule of rates covering all of the service in the towns of Mountain Home, Glenns Ferry, Gooding, Buhl, Twin Falls, and Shoshone, and other towns and villages in said community, and asking that the said defendant be enjoined from soliciting any contracts for power in excess of 15 horse power, until such time as the said defendant had filed its schedule of rates; and—

It appearing that a copy of said complaint was duly served on the defendant on the 27th day of January, 1915, and that the said defendant has failed to file an answer thereto or satisfy the matters therein complained of within the time allowed by the order of this Commission, to wit, ten days, and that the said defendant is now in default; and—

It further appearing from the schedules of the said defendant now on file with this Commission that the schedules cover only residential and commercial lighting, cooking, and power rates for alternating current applicable only to consumers having a connected load of 15 horse power or less in the towns of Buhl, Gooding, Mountain Home, and Glenns Ferry, and that no schedule of rates has been filed for the towns of Shoshone, Filer, and Twin Falls, and other towns and villages in said territory, and that no schedule has been filed setting forth the charges to be made for electrical energy to be furnished for power installations where the connected load exceeds 15 horse power; and—

It further appearing that the said defendant has no schedule of rates on file with this Commission for any of said towns or villages, applicable to air-heating installations used in connection with air radiators, hot-water heating systems, nor steam-heating systems,—

It is therefore ordered, that the said defendant, the Idaho Power & Light Company, a corporation, be declared to be in default, and default is hereby entered against said defendant.

It is further ordered that the said defendant, the Idaho Power & Light Company, a corporation, file with this Commission

within ten days from the date of this order, a full and complete schedule of rates for residential and commercial lighting and domestic cooking for the towns of Shoshone, Filer, Twin Falls, and all other towns in said territory for which schedules are not now on file, said schedule to conform strictly to the schedule of rates adopted by this Commission on the 2d day of April, 1914, and as amended by a further order on the 9th day of April, 1914, by the orders entered on said days in case No. F-33.

It is further ordered by this Commission, that the said defendant, the Idaho Power & Light Company, a corporation, file with this Commission on or before ten days after the date of this order, a full and complete schedule of rates for commercial cooking, power, and heating purposes in the towns of Glens Ferry, Mountain Home, Gooding, Shoshone, Buhl, Filer, and Twin Falls, and all other towns and villages in said territory.

It is further ordered that the said defendant, the Idaho Power & Light Company, a corporation, refrain and desist from soliciting or contracting for electrical energy for commercial cooking and power purposes in excess of 15 horse power of connected load, until such time as the schedules of rates herein referred to have been filed as required by this order.

ILLINOIS PUBLIC UTILITIES COMMISSION.

E. V. ORVIS

v.

CHICAGO & MILWAUKEE ELECTRIC RAILROAD COMPANY ET AL.

[Cases No. 2206 and 2397 Consolidated.]

Commissions — Jurisdiction — Enforcement of paving assessment.

The Commission has no jurisdiction to enforce a local assessment for paving against an electric railroad company.

Commissions — Jurisdiction — Neglect of railway company to maintain streets.

The Commission has no jurisdiction to compel a railway company to maintain streets, upon which its tracks are laid, in such a manner as not to interfere with the public use, since this is a matter within the control of the municipal authorities.

[March 4, 1915.]

COMPLAINT as to nonpayment of special assessments, maintaining a waiting room in business section of city, and maintenance of street pavement within the right of way of the railway companies: dismissed except as to maintenance of waiting room, jurisdiction as to which was retained for further action, if necessary.

By the **Commission**: The complaint in this case of E. V. Orvis, one of the commissioners of the city of Waukegan, is brought by him as a citizen of the city of Waukegan against the Chicago & Milwaukee Electric Railroad Company and against the Waukegan, Fox Lake, & Western Railway Company. Both of the above companies and their representatives in interest are referred to herein as the company and as the railway company.

W. O. Johnson, receiver for the Chicago & Milwaukee Electric Railroad Company, appeared for the railroad companies before this Commission.

The petitions set out twelve causes of complaint, which are more conveniently grouped in the five following paragraphs:

1. That the Chicago & Milwaukee Electric Railroad Company was specifically assessed \$15,000 in connection with the pavement of Marion street upon which its tracks are located, and that the railway company has refused to pay this assessment or any part thereof. This Commission is asked to enforce the present obligation on the part of the railway company to reimburse the city for all past-due assessments constituting a part of the above amount, which have been paid by the city of Waukegan in connection with the pavement referred to.

2. That the Chicago & Milwaukee Electric Railroad Company should maintain a 4 cent fare in Waukegan.

3. That no waiting-room service is maintained in the central part of Waukegan by the respondent roads.

4. That the track of the Waukegan, Fox Lake, & Western Railway Company on Washington street in Waukegan has been poorly maintained, that the rails are not flush with the surface of the roadway, the rails are not bonded, and the track is so uneven that the operation of this piece of road constitutes a nuisance.

5. A fifth cause of complaint is mentioned in ¶ 3 of the petition in case No. 2206, and was brought out in considerable detail

at the hearing. This complaint goes to the bad condition of the streets of the north and south line of the company located on Franklin, County, Clayton, Genesee, Belvidere, and Marion streets.

In this case the principal cause of complaint has been removed by the action of the parties, and other causes of complaint partly remedied, as will later appear.

The Commission holds that it has no jurisdiction of the matters mentioned in No. 1, regarding the indebtedness to the city of Waukegan of the Chicago & Milwaukee Electric Railroad Company for the pavement in Marion street. This is a matter which the legislature has properly left to the courts, and no order or relief can be granted by this Commission with respect to this complaint.

With respect to No. 2, that the Chicago & Milwaukee Electric Railroad Company should by its receiver maintain a 4 cent fare in Waukegan, the Commission finds that no evidence was adduced to support this complaint, and the prayer for such relief is denied.

With reference to No. 3 above, *viz.*, the question of the maintenance of a waiting room in the central part of Waukegan, the record shows that negotiations are at present pending between the Chicago & Milwaukee Electric Railroad Company and the owners of several stores in the vicinity of the junction of the Genesee street line and the Washington street line; and it is the belief of this Commission that these negotiations will result in the provision of a waiting room by the company in the central part of Waukegan. If this waiting room is not provided and opened within thirty days from the date of this order, this Commission will take further action.

Since the last hearing of this cause on July 13, all the matters complained of in paragraph No. 4 have been remedied, and there is nothing remaining under that paragraph for the Commission to decide.

The foregoing disposes of all complaints in the petition, with the exception of No. 5, above, which relates to the neglect of the railway company to maintain the streets in which its north and south track runs in Waukegan, in such a manner as to not seriously interfere with the public uses of the streets other than

electric railway transportation. The maintenance of a street in a passable condition for traffic is one which addresses itself primarily to the municipal authorities. The Commission, therefore, is not disposed to take jurisdiction of that matter at this time.

The Commission retains jurisdiction of the parties and of the subject-matter as far as such is necessary to enter any further order that may be required concerning the complaint with reference to the above-mentioned waiting room.

With reference to all other complaints the petition is dismissed.

ILLINOIS PUBLIC UTILITIES COMMISSION.

WARD & COMPANY

v.

CHICAGO & NORTHWESTERN RAILWAY COMPANY.

[No. 2875.]

Railroad rates — Prepayment of freight charges — Discrimination.

A railroad company is justified in refusing to accept shipments of freight upon which the charges are not fully prepaid, where an unusually large number of previous shipments from shipper have been refused or unclaimed at destination, and the company has in consequence been put to considerable inconvenience, annoyance, and expense, and has been unable to realize, even after the sale of the articles shipped, the total freight and storage charges.

[March 4, 1915.]

COMPLAINT as to discrimination against shipper, refusal of railroad company to accept shipments of freight unless charges are prepaid; dismissed.

By the **Commission**: The complaint in this case sets forth that the complainant is engaged in manufacturing food products, toilet preparations, and the selling of same direct to the consumer by mail orders; that the respondent—the Chicago & Northwestern Railway Company—is a public utility subject to the jurisdiction of this Commission. The complainant charges that the respondent is guilty of unjust discrimination, in that it

refuses to accept shipments offered it for transportation by the complainant unless the freight charges are prepaid. The complaint states that the complainant has offered to guarantee all freight charges on its outgoing shipments in case they should be left on the hands of the respondent, but that the respondent refuses to accept such offer unless the complainant accepts all goods consigned to it and brought to Chicago over respondent's line of railway; that complainant has instructed respondent not to accept or receive any shipments consigned to complainant. The remainder of the complaint consists principally of argument as to the alleged illegality of the action of the respondent in continually refusing to accept complainant's goods for shipment unless the freight charges are prepaid.

The respondent company answered, admitting that it is requiring complainant to prepay all freight charges on shipments tendered by the complainant, but denies that it is in any manner unjustly discriminating against the complainant, and denies all the other allegations in the complaint. The respondent, further, answering, avers that on April 28, 1914, it gave notice to all its agents to require prepayment of freight charges on all shipments tendered by the complainant, after long and numerous difficulties experienced by it in the handling of complainant's business; that the shipments made by complainant are in small quantities, made generally to agents, and that it has been the practice of the complainant to forward such shipments, charges collect; that a great many of the shipments have been either refused at destination, or returned by the consignee, for one reason or another, after delivery has been made; that in cases where the consignee refused to accept the shipment, the respondent has notified complainant herein and asked for disposition of such shipment; that the only reply respondent was able to secure from complainant was a rubber-stamp statement as to the contents and alleged value of the shipment, and advising the railway company to sell the goods for not less than \$5, deduct its freight charges, and remit balance to complainant; that from the experience respondent has had with goods shipped by complainant, it avers that said goods cannot be sold for sufficient amount to pay freight and storage charges, and in a great many instances cannot be sold at all; that this has resulted in the storage of a great many such ship-

ments at the stations of respondent, and in its warehouses at Chicago. Respondent further says that in connection with a great many shipments which have been accepted by the consignees, and which were afterwards returned by them, the complainant has refused to accept such shipments; that the usual reply respondent would receive from complainant in such cases was a rubber-stamp statement as follows:

"Refused-- get disposition from shipper. We cannot accept goods not prepaid, and you know it."

Respondent states that this has compelled the railway company to look to the original consignees for disposition of the shipment, and in practically all such cases the shipments are left on the hands of the respondent, and it has not been able to dispose of them for sufficient to pay the freight and storage charges. That under the law, a carrier is required to hold such property for a considerable time before disposing of it, and respondent avers that freight and storage charges amount to considerable more than can be realized from the sale of the property; that the complainant has offered to give disposition on all its future shipments that may be refused by the consignees, upon condition that the respondent cancel the charges on all old shipments which are now on hand for disposition; that respondent cannot legally do this, and the complainant has refused to make any settlement of the charges now outstanding on its refused shipments. The respondent says that it is ready and willing to receive the shipments of complainant if a satisfactory guaranty is made that charges on complainant's refused shipments will be paid and that disposition will be furnished on such shipments.

This case came on for hearing before the Commission at Chicago on October 28, 1914. Wayerly Brown appeared for the complainant; R. H. Widdicombe, attorney, appeared for the respondent.

From the evidence introduced in the hearing, it appears that the complainant has headquarters in the city of Chicago, and is in the business of selling by mail orders, and shipping to small merchants and to agents certain products, such as washing powders, soap powders, and other toilet preparations of various kinds. These goods are sold on consignment and shipped on thirty days' credit. The complainant also appears to operate a collection

agency for the purpose of collecting from its various customers; that the respondent has refused to accept any and all shipments from the complainant unless the freight charges are prepaid. This action appears to have been taken by the railway company for the reason that a great many shipments received by it from the complainant were either unclaimed or refused at destination; and when called upon, complainant declined to furnish disposition to the railway company or to pay the freight charges. As a result, the respondent was compelled to store the goods, and finally to sell them and apply the proceeds realized from such sales to the payment of its charges.

It appears that in most instances the proceeds derived from such sale of the goods were insufficient to cover the freight and storage charges, and in some instances the railway company was unable to sell the goods at any price.

The evidence further shows that the usual reply respondent would receive to its notice to complainant that a shipment made by the latter had been refused by the consignee, or was unclaimed, at destination, was the return of such notice with a statement stamped thereon reading as follows:

"Sell shipment referred to for charges, and remit to us the amount realized over and above charges. Value of shipment is \$10. Ward and Company."

In other instances the notice would be returned with the following statement stamped upon it:

"Disposition. Shipment contains forty \$1 packages shampoo powder and forty 15c packages soap powder. Retail value of total, \$46. Sell for not less than \$5. Deduct your charges and remit balance to Ward & Company."

It clearly appears from this record that the complainant in this case has had an unusually large number of its shipments refused or unclaimed at destination, and that by reason of its failure or refusal to pay the freight charges, or to furnish proper directions as to the disposition to be made of the goods when called upon to do so, that the respondent has been put to considerable inconvenience and annoyance, also expense, and in many instances has been unable to realize, even after a sale of the articles shipped, the total of its freight and storage charges.

Under such circumstances, and from a careful consideration

of all the facts shown by the record in this case, we have reached the conclusion that the respondent was justified in refusing to accept all shipments from the complainant upon which the freight charges were not fully prepaid.

It is therefore ordered that the relief prayed for by Ward & Company be, and the same hereby is, denied and that said complaint is dismissed.

INDIANA PUBLIC SERVICE COMMISSION.

IN RE OWENSVILLE WATER, LIGHT, POWER, & HEAT
COMPANY.

[No. 750.]

Rates — Water — Minimum charge.

A water, light, power, and heat company, upon its own application, was allowed to reduce its minimum charge for water from \$1 per month per consumer to 50 cents per month per consumer.

Rates — Water — Turning on and off — Fee.

A water, light, power, and heat company, upon its own application, was allowed to increase the turning on and off fee from \$1 to \$2, and to file with the Commission a rule for the \$2 charge.

[March 5, 1915.]

APPLICATION for permission to change rates; granted.

By the Commission: Comes now the Owensville Water, Light, Power, & Heat Company, of Owensville, Gibson county, Indiana, by its secretary-treasurer, C. B. Smith, and asks permission of the Public Service Commission to reduce the present minimum charge of \$1 per month per customer to 50 cents per month per customer, and increase the turning on and off fee from the present sum of \$1 to \$2 per customer.

The Public Service Commission of Indiana, having the above-entitled cause under consideration and being duly advised in the premises, finds that it is a public necessity and convenience to reduce said minimum charge from \$1 per month per customer to 50 cents per month per customer, and to increase the turning on and off fee from \$1 to \$2.

It is therefore ordered by the Public Service Commission of

Indiana that consent be and is here now given to the Owensville Water, Light, Power, & Heat Company to file with the Public Service Commission a supplemental schedule to the schedule already on file, which schedule shall contain a minimum charge of 50 cents per month.

It is further ordered that consent be and is here now given to the Owensville Water, Light, Power, & Heat Company to file a rule with the Public Service Commission of Indiana for a charge of \$2 for turning on and off water service to its consumers in said town.

KANSAS PUBLIC UTILITIES COMMISSION.

HODGES BROTHERS

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY,
JAMES W. LUSK, W. C. NIXON, AND W. B. BIDDLE,
RECEIVERS THEREOF, KANSAS CITY, CLINTON &
SPRINGFIELD RAILWAY COMPANY, AND MISSOURI
PACIFIC RAILWAY COMPANY.

[Docket 854.]

Railroad rates — Reasonableness — Former rate as criterion.

The mere fact that a former commodity railroad rate was lower than the present charge is not a sufficient ground for declaring the existing rate unreasonable.

Monopoly and competition — Intercompany relations.

Two railroads cannot be said to constitute in effect but one line so as to make a shipment over both essentially a single haul, although some of the officers of one company are also the officers of the other, where it appears that the companies are separate and distinct legal entities, controlled by separate boards of directors.

Railroad rates — Discrimination — Brick.

Brick is a low-grade commodity, which should move according to substantially the same rules and under the same conditions that are accorded to commodities of similar character and grade.

Railroad rates — Commodities transported between Kansas points — Exception.

An exception to the rule that all commodities, moving under class rates between Kansas points take the higher Missouri river rate as the maximum, based upon a single line haul, is made in relation to

traffic moving between stations in Kansas, over the St. Louis & San Francisco Railroad and the Kansas City, Clinton, & Springfield Railway, so that any class rate which might otherwise be higher is controlled by the rate to Kansas City.

Railroad rates — Brick — Transportation between Kansas points.

The rate upon brick in carload lots from points of origin in the southern Kansas gas belt, over the St. Louis & San Francisco Railroad and the Kansas City, Clinton, & Springfield Railway, should not exceed the rate from the same points to Kansas City, or 5 cents per 100 pounds, although constituting a two-line haul.

Railroad rates — Brick — Reasonableness — Three-line movement.

A complaint that a rate, of $6\frac{1}{2}$ cents on brick in carload lots, from points in the southern Kansas gas belt to Stanley, is unjust and discriminatory, was dismissed, as to the Missouri Pacific Railway Company, on the ground that the movement through Kansas to Stanley, as a point of destination, over any portion of the company's lines would constitute a three line movement.

[March 4, 1915.]

COMPLAINT as to the unreasonableness and discriminatory character of a rate of $6\frac{1}{2}$ cents per 100 pounds on brick in carload lots, from points in southern Kansas to Stanley, Kansas; complaint upheld as to St. Louis & San Francisco Railroad Company and the Kansas City & Clinton Railway Company; and dismissed as to the Missouri Pacific Railway Company.

Appearances: Frank Hodges for complainants; G. M. Forrester for respondents, the St. Louis & San Francisco Railroad Company, James W. Lusk, W. C. Nixon, and W. B. Biddle, receivers thereof, and the Kansas City, Clinton, & Springfield Railway Company; D. R. Lincoln for respondent, the Missouri Pacific Railway Company.

By Commissioner **Foley**, Chairman: The complainants herein, in a complaint filed June 25, 1914, allege, in substance, that they are engaged in the business of selling building material at Stanley, Kansas, that respondents are common carriers, engaged in the transportation of passengers and property by railroad, between points in the state of Kansas; that respondents charge a rate of $6\frac{1}{2}$ cents per 100 pounds on brick, in carload lots from points in southern Kansas, located in what is known as the "gas belt," to Stanley, Kansas, while, to near-by and competitive points, from the same points of origin, said respondents charge a rate of 5 cents.

It is further alleged in the complaint that the rate of $6\frac{1}{2}$ cents per 100 pounds, on brick, in carload lots, from the Kansas gas-belt points of origin to Stanley, is unjust, unreasonable, and discriminatory. The complaint concludes with a prayer that respondents be required to answer the charges set out in the complaint, and, after due hearing and investigation, an order be made, fixing rates from the gas belt in southern Kansas, to Stanley, Kansas, applicable on shipments of brick, carload lots, as to the Commission shall seem just and proper.

To this complaint, on July 20, 1914, the St. Louis & San Francisco Railroad Company, its receivers, and the Kansas City, Clinton, & Springfield Railway Company filed an answer, admitting that they are common carriers, engaged in the transportation of passengers and property by railroad, between points in the state of Kansas; that the rate on brick in carload lots, from points in southern Kansas, located in what is known as the gas belt, to Stanley, Kansas, is $6\frac{1}{2}$ cents per 100 pounds, and allege that these defendants are not advised as to what other points complainants intend to refer, in speaking of "near-by and competitive points," and respectfully refer to their published tariffs as containing the proper and lawful rate to other Kansas points. These respondents also deny that the rate of $6\frac{1}{2}$ cents per 100 pounds, on brick, in carload lots, from the Kansas gas belt to Stanley, Kansas, is unjust, unreasonable, and discriminatory, and in violation of the laws of the state of Kansas; and aver that said rate is a just and reasonable charge for the service rendered. This answer concludes with a prayer for the dismissal of the complaint.

On September 8, 1914, the respondent the Missouri Pacific Railway Company filed an answer, in which it first denies each and every allegation and averment contained in the complaint; and, second, avers, in substance, that the Public Utilities Commission of Kansas is entirely without jurisdiction to grant the relief prayed for in the complaint, as against the Missouri Pacific Railway Company, for the reason that, in the transportation of brick between the points mentioned in the complaint, whatever service the Missouri Pacific furnishes in such transportation constitutes and is an interstate movement, for that, owing to the location of the respondent company's track in the states of

Kansas and Missouri, such brick, when so handled by respondent company, moves out of the state of Kansas and into and through the state of Missouri for a considerable portion of the journey.

Upon the issues raised by these pleadings, a hearing was had and held at Olathe, on September 12, 1914, and all the testimony offered at that time was received by the Commission. At the conclusion of this hearing, it appearing that certain additional information was necessary to enable the Commission to properly determine the matter before it, an announcement was made that the hearing would be adjourned to a later date for the purpose of obtaining additional information.

Pursuant to such announcement, a further hearing was had and held at Olathe, on February 20, 1915, when additional evidence was introduced and the matter taken under advisement by the Commission.

The town of Stanley is located on the Kansas City, Clinton, & Springfield Railway line about 9 miles east of Olathe, at which point it is connected with the line of the St. Louis & San Francisco Railroad Company. This portion of the state is somewhat thickly settled. There are a number of towns whose business men enter into active competition with those at Stanley; and the carload rate upon brick to most, if not all, of the competing points, is 5 cents per hundred pounds. The movement of freight of this character to Stanley is small. The rate upon brick to that point, from points of traffic origin in the gas belt, over the Frisco and the Kansas City, Clinton, & Springfield was formerly 5 cents per hundred pounds; but a few years ago, it was raised to $6\frac{1}{2}$ cents per hundred pounds, which is the present rate. When the change was made, does not appear from the evidence.

The grounds of application for a reduction of the rate, as disclosed by the evidence, appear to be: First, that the rate was formerly 5 cents per hundred pounds and that no good reason existed for the raise to $6\frac{1}{2}$ cents per hundred pounds; second, that the two railway lines, namely, the Frisco and the Kansas City, Clinton, & Springfield, while nominally separate corporations, are in truth and in fact but one line, and that, while nominally a two-line haul, the transportation of the commodity is, in reality, carried on over but a single line; third, that the rate to Stanley is higher than to Olathe, Lenexa, and other neighboring towns,

and that Stanley is discriminated against in the transportation of this commodity.

The first ground upon which it is claimed reduction should be made, while entitled to consideration, is not by any means controlling upon the Commission, and if it stood alone and was the only ground or reason advanced by complainants, the relief would have to be denied.

As to the second ground or reason claimed for the reduction, namely, that the two lines named constitute in truth but one line, it is not borne out by the evidence. While it is true that some of the officers of the St. Louis & San Francisco Railroad Company are also officers of the Kansas City, Clinton, & Springfield Railway Company, yet those corporations appear to be separate and distinct legal entities, controlled by separate boards of directors; and the Commission finds nothing in the testimony to warrant it in holding that they constitute but a single line for the transportation of commodities from the gas belt to Stanley.

Taking up now the third ground on which it is claimed the reduction should be made, namely, that Stanley is discriminated against in favor of competing points, the Commission is of the opinion that this complaint is well founded. Brick is a low-grade commodity, and it appears to the Commission that it should move according to, substantially, the same rules and under the same conditions that are accorded to commodities of similar character and grade.

All commodities, moving under class rates, which may be transported between stations in Kansas, take the higher Missouri river rate as a maximum. This is generally confined to a single-line haul; but an exception appears to be made in relation to traffic moving between stations in Kansas, over the St. Louis & San Francisco Railroad and the Kansas City, Clinton, & Springfield Railway. Any class rate which might otherwise be higher appears to be controlled by the rate to Kansas City. The rate upon brick to Kansas City from the gas-belt points of origin is 5 cents per hundred pounds; and the rate charged to Kansas City controls the rate upon that commodity to points competing with Stanley. The higher Missouri river rate is applied to lump coal, slack coal, salt, and, perhaps, other commodities of a somewhat similar character; and while the $7\frac{1}{2}$ cent rate per

hundred pounds was applied upon cement from the gas belt to Kansas City, it was similarly applied to intermediate points, as a maximum charge.

The rates carried on coal, other than slack, from the Pittsburg field to Kansas City, are 80 cents per ton, the same as are published to Stanley. The rate on slack, from the Pittsburg field to Kansas City, is 70 cents per ton, while the rate to Stanley is 65 cents per ton, though it is but fair to the carriers to say that an application is now pending before the Commission to raise this slack rate to 70 cents. The transportation of this coal from the coal fields to Stanley is a two-line haul. Until recently, there was carried, from the Kansas gas belt to Kansas City, a rate on cement of $7\frac{1}{2}$ cents per hundred pounds, which was the same rate applicable to Stanley, with the same minimum loading.

Upon salt shipped from Hutchinson, Lyons, Kanopolis, and other points in the salt belt, a rate of 10 cents per hundred pounds is published to Stanley, the same rate being in effect to Kansas City. The routing from Hutchinson and Sterling is over the Santa Fe, through Olathe; from Hutchinson over the Rock Island and the Frisco to Olathe; and from other points over two or three roads to Stanley.

If lump coal, slack, cement, and salt can be transported from the points of traffic origin to Stanley over two or three lines at the same rate at which it can be transported to Kansas City and other neighboring points, we see no valid reason why the same rule should not apply to brick. It is true that in the special commodity tariffs on coal, cement, and salt, it is not necessary that they specifically carry the higher Missouri river rate application clause, as these rates are specifically published, and they do not, in any instance, exceed the Missouri river rate on the respective commodities.

It is the opinion of the Commission, and it so finds, that the rate upon brick in carload lots, from points of origin in the gas belt, over the Frisco road and the Kansas City, Clinton, & Springfield, should not exceed the rate from the same points to Kansas City; to wit, five cents per hundred pounds.

Regarding the complaint against the Missouri Pacific Railway Company, the Commission is of opinion that the evidence does not warrant any order against that company, as the move-

ment through Kansas over any portion of that company's lines to Stanley, as a point of destination, would appear to be a three-line movement, and the complaint against it will be dismissed.

An order will be issued in accordance with the findings of the Commission.

C. F. Foley, J. A. Cable, John M. Kinkel.

KANSAS PUBLIC UTILITIES COMMISSION.

IN RE APPLICATION THE HAVEN TELEPHONE
COMPANY.

[Docket 954.]

Service — Telephone — Abandonment of line.

Authority was denied a telephone company to abandon one of its lines, $7\frac{1}{2}$ miles long, for the reasons that the company had never made any effort to secure new and additional subscribers, that the line, when built, became impressed with a public service, that a part of the public insisted that it required the service, and that there seemed to be a possibility of increasing its revenues by securing new and additional patronage, although it appeared that the applicant owned the poles in such line, only $2\frac{1}{2}$ miles of the distance, that the line was depreciating, and that the present revenue was insufficient to furnish proper maintenance, depreciation, and a reasonable earning on the investment.

[January 22, 1915.]

APPLICATION for authority to abandon a telephone line; denied.

Appearances: W. T. Wisecup, Manager of the Haven Telephone Company, G. D. Merritt, of Haven, Kansas, W. H. Stewart, of Haven, Kansas.

By Kinkel, Commissioner: The applicant in this case alleges that it has a line extending from its switch board at Haven, to the village of Yoder; that there is no possibility of making this line productive by the addition of new subscribers, and that it desires permission to abandon the line on account of the expense incurred in maintaining the same, and also for the reason that the material in the line is depreciating.

The testimony shows that at this time there are but two sub-

scribers attached to the line in question, they being located in the village of Yoder, and paying a rental of \$1.50 per telephone per month, the only additional revenue being a sum of approximately \$2 per month for toll messages, making a total monthly revenue of \$5. The length of the line in question is approximately $7\frac{1}{2}$ miles. It runs out of Haven for a distance of about 5 miles on poles belonging to other companies, and the applicant owns the poles for a distance of about $2\frac{1}{2}$ miles out of Yoder, on which the line in question is strung. There seems to be no question about the fact that the line is depreciating, and that the revenue on same is insufficient to furnish proper maintenance, depreciation, and a reasonable earning on the investment.

On the other hand, it appears that the applicant has never made any effort to secure new and additional subscribers, and in testifying, its manager makes the positive declaration that "I never have got out and solicited for a telephone. When they want it they come and ask for it."

It is not the desire of the Commission to presume to offer suggestions to a telephone company in matters of this kind. However, it does seem that good business policy would suggest the impropriety of assuming a position as is here indicated by the testimony quoted. When the Haven Telephone Company built this line to Yoder, and placed it in service, it was then and there impressed with a public service, and the applicant is asking this Commission to go very far in its authority to grant permission to abandon this line, especially since a part of the public insists that it requires this service, and since there does seem to be a possibility for the applicant to increase its revenues by securing new and additional patronage.

One of the patrons in question testified that the service for a business telephone in Yoder would be worth \$3 per month to him. It is very evident from the testimony that this price of \$3 per month for a business telephone would not be an unreasonable one. The evidence is very clear that the present income is not sufficient to justify the operation of this line, yet there is a public demand for the service furnished by it.

In view of these facts, the Commission finds that the application of the Haven Telephone Company to abandon its line running from Haven to Yoder should be denied. It is further

found by the Commission that the Haven Telephone Company should have permission granted it to file an amended schedule of rates providing for a rental of \$3 per month for business telephones installed at Yoder, Kansas, and \$1.50 per month for dwelling house telephones installed at Yoder, Kansas; the said rates, when properly filed, to remain in full force until such time as the revenues produced on this line will warrant a further investigation and fixing of rates, that may, at that time, be proper and equitable; and an order will be issued accordingly.

KANSAS PUBLIC UTILITIES COMMISSION.

NORTHEAST KANSAS TELEPHONE COMPANY

v.

HIAWATHA MUTUAL TELEPHONE COMPANY.

[Docket 855.]

Service — Variation — Modification — Discontinuance.

No established service or "practice pertaining to the service" of any public utility can be varied, modified, or discontinued without the consent of the Commission.

Service — What constitutes regular use — What establishes a practice.

A telephone trunk line between the exchanges of two telephone companies cannot be said to be "installed and regularly used" for the transmission of toll messages, so as to create and establish a "practice pertaining to the service," when it appears that only one toll message was transmitted over the line, and that such message was to the manager of one of the companies, who at the time was in its exchange.

[January 20, 1915.]

COMPLAINT as to discontinuance of interchange of telephone toll service between two telephone companies; dismissed.

Appearances: F. M. Pearl for complainant; W. E. Archer for respondent.

By Kinkel, Commissioner: The complainant, in formal complaint, alleges that "the complainant and respondent companies did, by mutual agreement, and at equal expense, build and install in and between their respective offices in Hiawatha, Kansas, a metallic toll trunk line, for the interchange of toll messages

originating on the lines of the respondent company for parties or places reached by the lines of the complainant and its connecting lines; that said service was installed and regularly used for the transmission of messages as above set forth, on June 19, 1914, and that the subscribers and toll stations served by the complainant were duly notified of the additional facility; that the respondent, without cause, refuses to accept calls from the lines of the complainant for parties on the lines of the respondent company, greatly to the inconvenience of the subscribers and patrons of the complainant," and prays that "an order be made that service be immediately restored."

The answer of respondent alleges that "a physical connection between said exchange offices was made by J. G. Kale, its manager, subject to the approval of the board of directors of said respondent, and that afterwards, at a meeting of the board of directors of the respondent, said connection was not approved, and no service over said line was extended or accepted as alleged in said complaint." It especially denies that "there was any mutual agreement or contract for said connection, as alleged in complainant's complaint," and further questions "the right, power, or jurisdiction" of the Commission "to hear and determine matters relating to the existence of such alleged agreement, or whether or not such alleged agreement was properly entered into by the parties hereto."

The testimony of the complainant is to the effect that on June 17, 1914, Mr. A. J. Stevens, its president, and Mr. William Morisse, the president of the respondent company, held several consultations in reference to the conditions of a contract to govern the proposed connection, to be used for the transmission of toll messages, it being the opinion of Mr. Stevens that all business originating from his company's connections or its own system, destined to the individual exchange of the respondent company, the Hiawatha system, should be transmitted over the proposed trunk-line connection.

The testimony of Mr. Morisse, president of the Hiawatha Mutual Telephone Company, shows that his understanding of the arrangement was to the effect that only messages originating at, and destined to, the towns of Well, Falls City, White Cloud, Troy, Wathena, and Bendena should be transmitted through the

connecting trunk line in question. He further testified that he was without authority, as president of his company, in the matter of entering into contracts with competing telephone companies.

There was also introduced in evidence a certified copy of the minutes of a special meeting of the board of directors of the Hiawatha Mutual Telephone Company, held on June 20, 1914, at which the verbal agreement in question was, by a unanimous vote of the directors of said company, formally rejected.

The testimony is very clear on the proposition that the purported agreement was an oral one. It naturally follows, that it would have been practically impossible for the parties hereto to have complied with the provisions of § 11, chapter 238, Laws of 1911, which are that every public utility doing business in Kansas, over which this Commission has control, "shall furnish said Commission with copies of all rules, regulations, and contracts between common carriers or public utilities, pertaining to any and all services to be rendered by such public utility or common carrier."

The Commission does not deem it necessary, at this time, to consider the legal effect upon a purported contract, in case of failure to file a copy of same with the Commission, as provided for in the section just quoted; nor does it deem it necessary to consider the objection made by the respondent in reference to its "power or jurisdiction to hear and determine matters relating to the existence of such alleged agreement."

It is a primal and well-established proposition of law that the minds of the contracting parties must meet on the conditions and subject-matter of the contract. It is very clear from the testimony in this case that there was no "meeting of the minds" in the matters involved in the alleged contract, and therefore the Commission finds that there was, in fact, no legal contract made and entered into by and between the parties hereto.

The only remaining question involved is that of the "installation and regular use" of the trunk line between the two exchanges in question, which trunk line was, in fact, built and is now in actual use for the transmission of local messages between said exchanges, and which, from the testimony, seems to have been a necessary additional equipment to enable the parties hereto

to properly discharge their duties to the public in so far as the transmission of certain local messages between said exchanges is concerned.

Section 20, chapter 238, Laws of 1911, provides: "No change shall be made in any rate, toll, charge, or classification, or schedule of charges, joint rates, or in any rule or regulation or practice pertaining to the service or rates of any such public utility or common carrier, without the consent of the Commission."

Under this law, the Commission has repeatedly held that no established service or "practice pertaining to the service" of any public utility can be varied, modified, or discontinued without the consent of the Commission. So it is obvious that the question in this case is whether or not the practice of transmitting toll messages over the trunk-line connection made between the exchanges of the parties hereto was, in fact, "installed and regularly used," as alleged in the complaint, so as to create and establish a "practice pertaining to the service."

The testimony is undisputed that on June 19, 1914, the Northeast Kansas Telephone Company transmitted a toll call through one of the said trunk lines, to the exchange of the respondent company, for one Julius Goodwin; but that party was not found, and the call was therefore afterward canceled and hence never completed. On the same date, a call was received by the Northeast Kansas Telephone Company from a Mr. Kirby, of Troy, Kansas, for C. I. Stocking, the local manager of said company at Hiawatha. The operators of said company were aware of the fact that Mr. Stocking, the manager, was, at that time, in the exchange of the Hiawatha Mutual Telephone Company, and transmitted this call over one of the trunk lines in question, to said exchange, and Mr. Stocking completed the call by conversing with the said Kirby, at Troy, Kansas. The testimony therefore agrees, without contradiction, that the only completed toll message delivered over the trunk lines in question was the conversation had between the said Mr. Kirby and Mr. Stocking, the manager of the Northeast Kansas Telephone Company at Hiawatha. It does not seem to the Commission that the delivery of this one toll message can, in any way, be construed as the installation and regular use of a service, or the establishment of any "practice pertaining to the service" of a public utility.

It is to be especially noted that it is not the intention of the Commission to pass upon the question of its jurisdiction or authority to compel a physical connection between telephone exchanges, for the reason that that question is not herein presented or in any way involved.

In view of the foregoing facts, the Commission finds that no legal agreement had been entered into by and between the parties hereto. Neither had the service in question been installed and regularly used for the transmission of toll messages, so as to create or establish a "practice pertaining to the service" of the utilities herein represented. And the complaint in question should, therefore, be dismissed, and an order will issue accordingly.

MAINE PUBLIC UTILITIES COMMISSION.

IN RE PETITION OF THE KENNEBEC WATER DISTRICT.

Securities — Bond issue — Use of excess proceeds.

A quasi municipal corporation was authorized to issue its 4 per cent fifteen-year coupon bonds, to the total amount of \$100,000, the proceeds to be used to pay an issue of its bonds in equal amount, the sale to be to the highest bidder, provided, however, that any excess in the proceeds of such sale, which should not be needed or used for the purposes outlined in the petition, including such sums as might be realized for premiums, should be held by the petitioner for such application to the cost of the permanent additions to its property as the Commission should thereafter approve.

[March 5, 1915.]

PETITION for the issue of bonds; granted.

The appearances are set out in the opinion.

By the **Commission**: Harvey D. Eaton, attorney, Frederick C. Thayer, president, and George K. Boutelle, clerk, appeared for the petitioner. No one appeared in opposition.

This is a petition of the Kennebec Water District, a quasi municipal corporation organized under chapter 200 of the private and special laws of the state of Maine for the year 1899, for approval by this Commission of the issue of its bonds to the amount of \$100,000, payable in fifteen years from March 1,

1915. Public notice was ordered upon the petition and a hearing set for the 5th day of March, A. D. 1915, at the offices of this Commission, in the city of Augusta, and proof of the giving of such notice was duly made and is of record. At the hearing held this day, the petitioners presented to this Commission all the facts necessary or required for a full understanding of the matter. The purposes for which it was deemed necessary to issue said bonds are fully set forth in the petition on file, and there is also on file the proper balance sheet of the petitioner and a copy of vote of the petitioning corporation with reference to the issue of said bonds, each in due form and properly authenticated.

And now after notice, full investigation, and due consideration, and upon hearing, it appearing that the proposed issue of bonds is for lawful purposes and is consistent with the public interest, it is

Ordered and decreed that the approval of the Public Utilities Commission be and hereby is given to the issue, by the Kennebec Water District, of its 4 per cent, fifteen-year coupon bonds, in denominations of \$1,000 each, and to the total amount of \$100,000, the proceeds of the same to be used to pay an issue of its bonds in equal amount, falling due and payable May 1, 1915. Said bonds are to be sold to the highest bidder after proper public advertisement of the time, place, and terms of such sale.

Said Kennebec Water District, within twenty days after June 1, 1915, shall report to this Commission full details of such advertisement of sale, including the amount received for such bonds; and if the entire issue has not then been sold, said district shall within twenty days after sale of the balance of the entire issue make a full and detailed report of the sale of such balance, and shall also include in this report a statement, under oath, of its expenditures of the proceeds of such sale.

Any excess in the proceeds of the sale of this issue of bonds which shall not be needed or used for the purposes outlined in the above-named petition, including such sums as may be realized for premiums, shall be held by the petitioners for such application to cost of the permanent additions to the property of the petitioner as the Public Utilities Commission shall hereafter approve.

Public Utilities Commission of Maine, Benjamin F. Cleaves,
Wm. B. Skelton, Chas. W. Mullen.

Note.—Re Portland Water Dist. January 26, 1915. The Portland Water District was authorized by the Commission on January 26, 1915, to issue its 4 per cent twenty year, \$1,000 coupon bonds to the amount of \$200,000, such bonds to be dated January 1, 1915, and to become due January 1, 1935, the proceeds to be used only for the following purposes named in the petition: To pay outstanding temporary notes, to pay for extensions made in 1914, to pay for real estate purchased in 1914, to pay for meters purchased in 1914, to pay for lands taken for protecting watershed. Any excess in the proceeds of the issue not needed or used for the above purposes, including such sum as might be realized from premiums, was ordered to be held for such application to the cost of permanent additions to the property of the petitioner as the Commission should thereafter approve.

Re Central Maine Power Co. February 2, 1915. The Central Maine Power Company was authorized by the Commission on February 2, 1915, to issue \$600,000 par value 6 per cent coupon notes of \$1,000 each, to be dated February 1, 1915, and to be sold at not less than 98, the proceeds thereof to be applied to meet the payment of its issue of coupon notes in the aggregate amount of \$600,000, maturing May 1, 1915, any excess in the proceeds from the sale thereof not needed or used for the purposes above stated to be held by the petitioner for such application to the cost of permanent additions to its property as the Commission should thereafter approve.

MAINE PUBLIC UTILITIES COMMISSION.

IN RE VINAL HAVEN ELECTRIC COMPANY.

Monopoly and competition — Permission to occupy new field — Consent of occupying company.

Permission was granted an electric company to enter a certain town, it appearing that, while another company was authorized to supply electric service, it was, in fact, merely furnishing gas; that the same individuals were interested in both companies; that it was their intention to consolidate them; and that the gas company consented to the granting of the petition.

[March 3, 1915.]

PETITION of an electric company for permission to furnish service in the town of Vinal Haven; granted.

By the **Commission**: A petition asking the consent of this Commission under § 27 of chapter 129 of the Public Laws of the state of Maine for the year 1913, that the petitioner might furnish its service in the town of Vinal Haven, was duly presented and a hearing thereon ordered, as appears of record in this office, which hearing was held as ordered at the offices of the Commission on this 3d day of March, A. D. 1915. Notice of the hearing as ordered was shown by proper evidence to have been given. The petitioner was represented by Arthur S. Littlefield, of Rockland, and no person appeared to object to the granting of said petition.

At the hearing it was made to appear that heretofore the town of Vinal Haven had been served with gas by a corporation known as the Vinal Haven Lighting Company, and that said last-named corporation also had authority to perform other services within the town of Vinal Haven, some of which purposes were included in the purposes of the petition; but that the Vinal Haven Lighting Company was not furnishing in Vinal Haven any product except gas. It further appeared that the same individuals who are interested as stockholders in said Vinal Haven Lighting Company are also interested as stockholders in the petitioning corporation, and it was stated that it was the purpose of the petitioner to ultimately take over the business and property of said Vinal Haven Lighting Company. There was filed with this Commission, and is a matter of record in this office, the written consent of said Vinal Haven Lighting Company to the granting of this petition and the assent of the last-named corporation to the furnishing by the petitioner of its service in said town of Vinal Haven.

Upon the foregoing facts and circumstances, and believing and finding that public convenience and necessity requires the same, it is—

Ordered that under the provisions of § 27 of chapter 129 of the Public Laws of the state of Maine for the year 1913, the prayer of the petitioner be granted, and that it be and hereby is authorized to furnish its service within said town of Vinal Haven. And it is further

Ordered that a copy of this order and decision be sent by reg-

istered mail to the petitioner and to said Vinal Haven Lighting Company.

Public Utilities Commission of Maine, Benjamin F. Cleaves,
Wm. B. Skelton, Chas. W. Mullen.

NEW JERSEY BOARD OF PUBLIC UTILITY COMMISSIONERS.

IN RE OTTO SIGRIST

v.

PUBLIC SERVICE GAS COMPANY.

Service — Gas — Extension of mains.

A gas company was not required to extend its mains 540 feet in order to furnish complainant's residence with gas, it appearing that the estimated revenue was \$27 per annum and the estimated cost of furnishing the service, including an allowance for return on the investment, was \$43.30, the Commission not being of the opinion that such an extension would be reasonable or practicable, or would furnish sufficient business to justify its construction and maintenance.

Service — Gas — Extension of mains — Test of reasonableness.

To justify the Commission in ordering an extension of gas mains a distance of 540 feet where the estimated revenue was placed at \$27 per annum and the estimated cost of furnishing the service, including an allowance for return on the investment, at \$43.30, an amount of revenue would be required which would exceed by 50 per cent the estimated revenue to be obtained.

[March 2, 1915.]

COMPLAINT as to refusal of a gas company to extend its mains to complainant's residence; dismissed.

By the **Commission**: Otto Sigrist, the complainant in this proceeding, complained that the Public Service Gas Company refused to extend its gas mains so as to furnish his new residence, No. 39 Fisher avenue, Newark, with gas.

The matter was investigated by the inspector of the Board, and it was found that to reach the residence an extension of 540 feet would be required. The estimated revenue was placed at \$27 per annum and the estimated cost of furnishing the service, including an allowance for return on the investment, was placed at \$43.30 in the inspector's report, but in the company's statement it was placed at a much higher figure. In the opinion of the Board, **an**

amount of revenue would be required, to justify the Board in ordering the extension made, which would exceed by 50 per cent the estimated revenue to be obtained from the present applicant for service.

The matter was heard by the Board under date of January 8th, and further testimony was taken under date of January 22d. The testimony developed that the house was not entirely piped for gas, but was equipped with electric lighting fixtures, excepting in the kitchen, where a combination fixture had been installed. The kitchen is equipped with a coal range, and piping connections are available for a gas range, which, however, had not been installed.

In view of all the testimony in the case, the Board is not of the opinion that this "extension is reasonable and practicable and will furnish sufficient business to justify the construction and maintenance of the same," and the complaint will therefore be dismissed, without prejudice to the submission of a new complaint, if one or more additional houses are built which could be served from the same extension.

Board of Public Utility Commissioners, by Ralph W. E. Donges, President.

NEW YORK PUBLIC SERVICE COMMISSION, SECOND DISTRICT.

OLBISTON COMPANY OF UTICA

v.

NEW YORK TELEPHONE COMPANY.

[Case 4285.]

Rates — Telephone — Construction of tariff — Private branch exchange.

The filed tariff of a telephone company providing for flat-rate private branch exchange service to business places was held to apply to complainant's apartment houses, including connection with rooms and offices therein not occupied by tenants and with a power house located on the premises.

P.U.R.'15A.—65.

Rates — Telephone — Private branch exchange — Apartment houses — Tenants' connections free.

A telephone company was ordered to install in complainant's apartment houses a flat-rate private branch exchange service, and to permit any and all of the tenants in such apartment houses who contracted for telephone service at direct line residence rates to have their lines connected with the central telephone office, through such private branch exchange, without additional charge.

Service — Telephone — Directory listings.

A telephone company was ordered to give apartment house tenants, the lines from whose rooms or offices ran through the apartment house, private branch exchange, separate telephone directory listings.

Service — Telephone — Free ringing trunk.

A telephone company was ordered to furnish complainant, having a flat-rate private branch exchange in its apartment houses, with a ringing trunk without additional charge, provided twenty of complainant's apartment house tenants contracted for service at direct line residence rates.

[January 26, 1915.]

PROCEEDING to compel a telephone company to install in apartment houses a flat-rate private branch exchange service; installation ordered.

Present: Seymour Van Santvoord, Chairman; Martin S. Decker, Devoe P. Hodson, Wm. Temple Emmet, Frank Irvine, Commissioners.

By the **Commission**: The complainant, the Olbiston Company of Utica, New York, has four apartment houses, three of which are located on or near the corner of Genesee and Oswego streets and the fourth on the corner diagonally across the intersection of these two streets, in the city of Utica, New York. These apartment houses contain a total of 138 separate apartments, and in connection therewith there is a power house and heating plant under the same management.

The respondent, the New York Telephone Company, has heretofore furnished the Olbiston Company with a private branch exchange telephone service on a flat-rate basis for all of the buildings under an old form of contract, but has served notice upon the Olbiston Company terminating the contract on the ground that it is discriminatory, and not in accordance with its regular schedule filed with this Commission. However, upon

the institution of this proceeding the respondent has stayed action and the complainant is still receiving service at the old rates.

The complainant desires to continue a flat-rate private branch exchange for the combined service of itself and its tenants.

The respondent offers to furnish a private branch exchange service for the respondent's buildings on a message rate basis, or, as an alternative, is ready to contract with the complainant and the tenants separately for the services provided for in its tariff at flat rates.

Flat rates prevail in Utica for all individual residence subscribers, but they do not apply to apartment houses. In all essential respects this case is identical with that of Dwight H. Murray, of Syracuse, against this respondent (case 4205), and its determination must be similar to that which was reached in the Murray Case. Therefore, after due consideration—

Ordered (1) That the respondent, the New York Telephone Company, be and is hereby ordered to furnish the complainant, upon demand made on or before March 1, 1915, a flat-rate private branch exchange telephone service for the apartment houses of the complainant with extension stations connected therewith, located within the rooms and offices in said apartment houses not occupied by tenants and within the power house located on the premises of the respondent, as provided for in the respondent's filed tariff for business places, with the intent and purpose that the telephone lines of tenants in said apartments shall be connected with said service as hereinafter provided.

(2) That the respondent shall permit any or all of the tenants in said apartment houses of the complainant to contract for telephone service at the respondent's direct line rate for residence service in the city of Utica, New York, and to have their lines connected by respondent, without additional charge, with said private branch exchange service and system of the complainant, as provided in order clause 1 hereof, and thence by trunk line to the respondent's central office in Utica, New York, separate directory listings for tenants so contracting to be provided by respondent.

(3) That in the event that twenty or more tenants in said apartment houses shall take the service as provided in order

clause 2 hereof, that respondent shall furnish the complainant with a ringing trunk without further charge.

(4) That in the event that said service is installed as provided in order clauses 1 and 2 hereof, the respondent shall provide, without further charge, a sufficient number of trunk lines to its central office to properly handle the traffic of said service and system, but is not required to furnish trunks in excess of that requirement.

(5) That the respondent, New York Telephone Company, may file and publish the necessary amendments to its tariffs on one day's notice.

(6) That respondent, New York Telephone Company, shall file with this Commission its notice concerning acceptance of this order under § 23 of the public service commissions law within ten days after receipt of a copy hereof.

By the Commission.

Note.—The points in the above case were brought before the Commission in the matter of the complaint of Dwight H. Murray v. New York Telephone Company (Case 4205, May 26, 1914, 32 Commission Leaflets, 483, American Tel. & Tel. Co. Series). In that case it appeared that the complainant was the owner of an office building in Syracuse, and demanded of the respondent switch-board service for the entire building at flat rates. It appeared, further, that according to the tariffs of the respondent, flat rates applied to individual subscribers only, and not to hotels, clubs, or apartment houses. The respondent claimed that each of the tenants in the building should make a separate contract, and that to enter into a contract with the owner of the building, embracing flat-rate service to all of the tenants at reduced rates, would constitute discrimination in favor of the tenants as against individuals generally taking business telephone service in the city. It was accordingly suggested by the Commission that the respondent should make separate contracts with each of the tenants, giving them the option of having direct outside service or of being connected with a switch board to be placed in the building, the rate for each of the tenants to be the regular business rate of \$60 per year for flat-rate service. The switch board was to be equipped with all necessary trunks and two extensions for the use of the building, at a total cost to the owner of the building of \$108 per year. This arrangement was accepted by the complainant and an order entered in part as follows:

"Ordered that respondent, New York Telephone Company, be, and is hereby, directed and required to install in complainant's build-

ing, 606 608 East Genesee street, Syracuse, New York, a switch board, trunks, and two extension phones for complainant at a total cost not to exceed \$108 per year, and that said respondent shall also, after making its contracts with tenants in said building, run its lines from the instruments in offices of said tenants, through the said switch board, for use if desired by said tenants or any of them, giving all the lines so run through the switch board a common number, but listing separately each of said tenants in its directory."

In the case of *Murray v. New York Teleph. Co.* (Case 4205, October 29, 1914, 36 Commission Leaflets, 293, American Tel. & Tel. Co. Series), it appeared that the respondent had failed to comply with the terms of the above order in that it had refused to install an extension telephone near the switch board provided for in such order. On considering this question, the Commission found that compliance with the order involved placing two extension telephones in such parts of the premises of the complainant as were not devoted to the use of tenants, according to the direction of the complainant, and not according to the particular use which complainant might make of such extension telephone. The Commission found, further, that the complainant in the use of the switch board was entitled to the use of the extension telephones in connection therewith, and for the general purposes of the building, including communication with tenants. Accordingly, a supplemental order was issued in the following terms:

"It is therefore ordered, that respondent, New York Telephone Company, shall proceed forthwith to complete the telephone installation directed in said order of May 26, 1914, by installing the additional extension telephone upon his (complainant's) premises and in such part of the building not rented to tenants as the complainant may direct."

OKLAHOMA CORPORATION COMMISSION.

FRANK MAHANNAH, TREASURER OF THE HACKBERRY
TELEPHONE COMPANY,

v.

ARNETT TELEPHONE COMPANY, ARNETT, OKLAHOMA.

[Order No. 903; Cause No. 2101.]

Rates — Switching charges.

A switching charge by one telephone company to another was established, of 25 cents per telephone per month, with a minimum of \$1.50 and a maximum of \$5 per month for each line switched.

Service — Free interchange — Other line traffic.

A telephone company was ordered to discontinue the practice of allowing traffic from lines, other than its own, to be switched into the exchange of its connecting company, and thence to the connecting company's subscribers, where there was a contract for free interchange of service.

Service — Exchange area — Rural subscribers.

When a rural line is connected to an exchange, it becomes a part of the exchange, the same as if in the local exchange area.

Rates — Privileges — Rural subscribers.

Rural subscribers on lines connected with an exchange are entitled to the same privileges as any other subscribers directly connected with the exchange, and no charge should be made for local service to subscribers, other than the switching fee or exchange rental.

Rates — Toll charge — Rural subscribers.

A telephone company was ordered to discontinue the practice of making a toll charge, where a subscriber on one rural line directly connected with its exchange desires connection with a party on another rural line, also directly connected with its exchange.

[February 17, 1915.]

COMPLAINT as to violation of a contract for free interchange of service; objectionable practices ordered discontinued.

OPINION AND ORDER.

By the **Commission**: The complaint in this case was filed by the Hackberry Telephone Company, by Frank Mahannah, treasurer, against the Arnett Telephone Company of Arnett, alleging that the Arnett Company had violated a contract with the complainant, under the terms of which the Arnett Company agreed to give the Hackberry Telephone Company free exchange over all lines operated and controlled by the Arnett Company, in consideration of which the Hackberry Company agreed to give the Arnett Company like service over all lines operated or controlled by it; that the Arnett Company had violated its agreement or contract since the 1st day of January, 1914, in that the Arnett Company had refused to give the Hackberry Company free service over its lines.

It was shown by the evidence introduced at the hearing that the Hackberry Company owns a rural telephone system consisting of three rural lines with which between fifty and sixty telephones are connected, with a switch board at Reason; that the Hackberry Company owns a line running from Reason to Arnett, with which there are eighteen telephones connected; that

this line connected with the local exchange of the Arnett Telephone Company; that it has been the practice of the Hackberry Company to allow traffic of lines other than its own to be switched over the line between Reason and Arnett, thereby securing connection with the Arnett Telephone Company's subscribers; that when it was discovered by the Arnett Telephone Company that patrons of lines other than those of the Hackberry Telephone Company were obtaining service through the Hackberry Company's connection, the Arnett Company discontinued the service to the Hackberry Company on account of the abuse of the privileges as stated in the contract.

The evidence further shows that it is the practice of the Arnett Telephone Company to charge some rural lines connected with their exchange a toll fee of 15 cents per call when a subscriber on one rural line directly connected with the exchange at Arnett desired connection with a party on another rural line also directly connected with the exchange at Arnett.

The Commission is of the opinion, from the evidence introduced in this case, that the Arnett Telephone Company should charge the Hackberry Telephone Company 25 cents per telephone per month for switching service, with a minimum of \$1.50 and a maximum of \$5 per month for one line; that the Hackberry Telephone Company should discontinue the practice of switching lines other than its own over the Hackberry line connected with the Arnett exchange.

The Commission is further of the opinion that when a rural line is connected to an exchange it becomes a part of the exchange the same as if the rural line was in the local-exchange area; that the rural subscriber is entitled to the same privileges as all other subscribers directly connected with the exchange, and that no charge should be made for local service to subscribers other than the switching fee or exchange rental.

It is therefore ordered that the Arnett Telephone Company charge the Hackberry Telephone Company 25 cents per telephone per month for switching service, with a minimum of \$1.50 and a maximum of \$5 per month for each line switched.

It is further ordered that the Hackberry Telephone Company discontinue the practice of switching lines other than its own

over the Hackberry line connected with the exchange of the Arnett Telephone Company.

It is further ordered that no toll charge shall be made by the Arnett Telephone Company where a subscriber on one rural line directly connected with its exchange desires connection with a party on another rural line directly connected with its exchange.

Corporation Commission of Oklahoma, J. E. Love, Chairman;
A. P. Watson, Geo. W. Henshaw, Commissioners.

SOUTH DAKOTA BOARD OF RAILROAD COMMISSIONERS.

IN RE INVESTIGATION OF RATES, CHARGES, AND PRACTICES OF TELEPHONE COMPANIES.

[F-100.]

Rates — Stockholders and nonstockholders — Discrimination.

Telephone companies were required to discontinue the practice of charging a different rate to stockholding subscribers from that charged nonstockholding subscribers.

Rates — Schedules — Rules — Filing.

Telephone companies were required to establish a regular schedule of rental rates and charges, incorporating therein any rules or conditions imposed, and to file same with the Commission.

Rates — Stockholders and nonstockholders — Discrimination — Annual assessment.

Telephone companies were ordered to discontinue the practice of charging and collecting assessments for the payment of telephone service, it appearing that certain nonstockholding subscribers were being charged a monthly or yearly rental rate, while stockholding subscribers were being permitted to pay a yearly assessment at the end of the year.

Rates — Contracts — Connecting telephone companies — Writing.

Telephone companies were ordered to put into writing all contracts and agreements affecting their service or rates.

Service — Contracts — Connecting telephone companies — Filing.

Telephone companies were ordered to file with the Commission certified copies of all contracts and agreements affecting their service or rates.

Franchises — Ordinances — Filing.

Telephone companies were ordered to file with the Commission certified copies of all of their franchises and ordinances.

Rates — Telephone — Arrears — Court action.

Telephone companies were ordered to discontinue the practice of permitting its rentals or charges to become past due and run for an indefinitely long period, action in court to recover the amount due being open to them.

Rates — Advance payment.

A reasonable advance payment of telephone rentals was approved by the Commission as good practice.

Rates — Telephone — Prompt payment.

Telephone companies should insist upon prompt payment of rentals.

Service — Telephone — Refusal — Guaranty.

Telephone companies were authorized to refuse service to a subscriber who fails or refuses to pay his rental until such time as proper guaranties are made that all future bills will be paid.

Rates — Free service — Railroad depots.

Telephone companies were ordered to discontinue the practice of maintaining and operating free telephones in railroad depots, and to charge railroad companies for service at the same rate and under the same terms and conditions as apply to other business phones.

Rates — Delivery of toll messages — Rural lines — Discrimination.

Telephone companies were ordered to discontinue the practice of permitting or exacting a charge in addition to a statutory terminal fee for the delivery of toll messages to rural lines, on the ground that it would make a different rate for a message in one direction from that in the other.

Rates — Toll-message delivery charge — Rural lines.

Telephone companies were ordered to discontinue the practice of permitting or exacting an added charge for the delivery of toll messages to rural lines, on the ground that the statutory terminal fee of 5 cents for incoming and outgoing toll messages, originating or terminating within the state, is presumed to be reasonable and to afford compensation for all of the services in connection with the toll message, both in the originating and in the terminating exchange, as well as for the service of delivering the toll message over a rural line which is connected with the local exchange, whether that rural line be owned and operated by the local exchange or connected with it on the switching basis.

Service — Telephone exchange area.

A town telephone exchange and the rural lines owned and operated by it, or rural lines connected with it on the switching basis, constitute an exchange or unit for telephone service.

Statutes — Construction — Toll messages — Terminal charges.

The telephone exchange at the point where a toll message originates should have for its services 5 cents, and for the service of delivering the message at the exchange where it terminates there should be a compensation of 5 cents, and no more, under a statute providing for a terminal fee of 5 cents for incoming and outgoing toll messages originating or terminating within the state.

Rates — Party-line switching — Statutory maximum.

Telephone companies were ordered to discontinue an arrangement

whereby 35 cents per month per phone was to be paid for switching rural party lines where the rate was not paid in advance, and to enter into a contract establishing a switching rate not in excess of 25 cents per month per phone, for each phone on any party line, that being the maximum charge fixed by statute for party-line switching within the state.

Stockholders — Telephone equipment — Ownership.

Telephone companies were ordered to discontinue the policy of permitting individual subscribers or stockholders to own any part of the equipment going into the construction of a telephone plant, on the ground that it is contrary to telephone practice for the reason that it makes it impossible for the company properly to maintain, operate, or police its lines, and that it often creates dissension and tends to cause discrimination in the practices of the company.

Stockholders — Construction and equipment — Purchase by company of subscribers — Security issues.

Telephone companies were ordered to purchase of subscribers, and to own, all telephone equipment, stock issues to be rearranged on the basis of the new investment.

Service — Purchase of securities — Condition precedent.

Telephone companies were ordered to discontinue the practice of requiring an intending subscriber to purchase stock before service would be given him, on the ground that such practice is unnecessary, impractical, and works hardship on the public.

Service — Rates — All who apply.

A telephone company that undertakes to furnish telephone service in a given territory should provide that service at reasonable rates to whomsoever desires it.

Service — Extension of lines.

A telephone company undertaking to furnish service in a given territory will not be compelled to build an unreasonable distance in order to give such service, what is a reasonable distance depending upon the facts in each case.

Intercompany relations — Service — Toll messages — Flat rate discontinued.

Connecting telephone companies were ordered to discontinue paying a long-distance telephone company on a flat-rate basis of so much per year or per month for originating and terminating toll messages, and to enter into contracts for such service based on the statutory terminal charge of 5 cents per message, for the reason that where compensation for such service is fixed on a flat-rate basis it is impossible to determine whether such compensation is not more than the maximum allowed by law.

Intercompany relations — Service — Rural-line switching — Flat rate discontinued.

Connecting telephone companies were ordered to discontinue paying a flat rate of so much per year or per month for switching rural lines, and to enter into contracts for that service based on the statutory rate of not to exceed 25 cents per month per phone, for the reason that where

the compensation for such service is fixed on a flat-rate basis, it is impossible to determine whether such compensation is not more than the maximum allowed by law.

Intercompany relations — Free interchange — Discrimination.

It is discriminatory for a telephone company to grant free interchange of service to one telephone company and require another telephone company to pay a charge therefor.

Service — Free rural line switching — Effect upon service — Payment required.

A free interchange of telephone service between different telephone companies by means of rural lines was disapproved, and rural-line subscribers receiving switching service were required to pay at least the actual cost of such switching, on the ground that while there may be some benefit to be derived from the free interchange of service, yet if indulged in to too great an extent it creates such congested conditions that the service loses its efficiency.

Rates — Rural-line switching — Actual cost to be paid by subscribers.

The subscribers of a rural telephone line who receive switching service through an exchange should be required to pay at least the actual cost of such switching,—and in no case should this amount exceed the statutory maximum of 25 cents per month per phone.

Rates — Rural-line switching — Burden of cost on town subscribers unless paid by rural subscribers.

The cost of operating a telephone system must necessarily be paid by the public, and if the cost of switching rural line phones is not borne by the subscribers getting the service, necessarily the rental rates of town subscribers will be increased to the extent of the cost of doing such rural party-line switching.

Reports — Penalty.

A penalty attaches for the failure of telephone companies to make reports to the Commission in conformity with the rules and regulations prescribed by the Commission.

Intercompany relations — Responsibility for charges accruing to subscribers on rural lines.

A rural telephone company or the owner of a rural telephone line is responsible to the exchange company for the amount of all toll messages and switching fees that may accrue to the subscribers of such company or line, for the reason that any other arrangement would place an undue burden upon the exchange company by requiring it to make collections from individuals over whom it has no control, and for the further reason that the rural company or line is in a position to refuse service to its subscribers unless bills are paid.

Depreciation — Necessity of providing for — Protection of investor and public.

It is necessary and good business policy for a telephone company to set aside annually out of its earnings a reasonable percentage of the value of its plant to take care of the item of depreciation, in order to prevent a severe burden upon the investor as well as upon the public when the actual replacement of the plant becomes necessary.

Rates — Nonsubscribers.

Telephone companies were ordered to establish a nonsubscriber rate for local service, should any be adopted.

Depreciation — Not less than 6 per cent nor more than 8 per cent.

Telephone companies were ordered to establish a just and reasonable schedule of yearly rental rates sufficiently high to pay all legitimate operating and maintenance charges, and set aside not less than 6 per cent, nor more than 8 per cent, of the value of their properties to take care of depreciation.

Depreciation — Treatment of — Amount in reserve — Annual report.

Telephone companies were ordered to report to the Commission in their annual reports the treatment of and amount in the depreciation fund.

Return — Rates to include fair amount.

Telephone companies were ordered to establish a just and reasonable schedule of yearly rental rates, such rates to be sufficiently high to allow the stockholder a fair return on his investment.

[February 23, 1915.]

INVESTIGATION into the rates, charges, and practices of telephone companies; changes ordered.

By the Board: The investigation in this proceeding was made by this Board on its own initiative after considerable correspondence had been had relative to the rates charged by and the practices indulged in by these telephone companies. Being unable to arrive at a satisfactory adjustment by correspondence, the matter was set down for hearing, and a hearing held in the city of Bradley, in the county of Clark, state of South Dakota, on the 23d day of April, 1914, before Commissioners F. C. Robinson and W. G. Smith, at which time and place the following appearances were made: Highland Telephone Company by J. D. Hutchinson, President, C. C. Hutchinson, Manager; Bradley-Crocker Telephone Company by C. M. Naramore, President and Manager, and D. E. Wadleigh, Vice President; Wallace Farmers Telephone Company by M. B. Peterson, President, and Peter Burg, Vice President; York-Troy Telephone Company by August Knebel, Secretary; Conde Telephone Company by Charles Conklin, Treasurer; Lily Local Telephone Company by Oliver Larson, Secretary and Manager; Butler Telephone Company by C. C. Wade, Secretary; Olean Telephone Company by T. A. Hersey, President, and W. A. Taylor, Secretary; Lily-Lounsberry Telephone Company by T. E. Sveum, President, and John C. Lee, Secretary.

The record discloses that the Butler Telephone Company is an incorporated company with a capital stock of \$10,000, and operates an exchange at Butler and rural lines radiating therefrom; that the Lily Local Telephone Company is incorporated with a capital stock of \$3,000, and operates a small exchange at Lily and one short farm line; that the York-Troy Telephone Company is incorporated with a capital stock of \$3,500, and operates rural party lines only; that the Highland Telephone Company is incorporated with a capital stock of \$20,000, and operates an exchange at Crandall and rural lines connecting with the exchanges at Conde and Verdon; that the Bradley-Crocker Telephone Company is incorporated with a capital stock of \$25,000, and operates an exchange at Crocker and rural lines connected therewith; that the Wallace Farmers Telephone Company is incorporated with a capital stock of \$6,000, and operates a local exchange at Wallace and rural lines in the vicinity thereof; that the Vivian-Wallace Telephone Company is incorporated with a capital stock of \$1,500, and operates rural lines in the vicinity of Lily, and connected with the exchanges at Lily and Wallace; that the Olean Telephone Company is incorporated with a capital stock of \$10,000, and operates an exchange at Turton and rural lines connecting with Conde, Doland, and Crandall; that the Conde Telephone Company is incorporated with a capital stock of \$25,000, and operates an exchange at Conde and rural lines radiating therefrom.

It is also a matter of record that some of these companies, particularly the Bradley-Crocker, the York-Troy, the Wallace Farmers, and the Vivian-Wallace, have been charging a different rate to nonstockholder subscribers than to their stockholder subscribers. In other words, the practice has been indulged in of charging a nonstockholder subscriber a monthly or yearly rental rate, while the stockholders have been permitted to pay an assessment at the end of the year.

It is also a matter of record that the Butler Telephone Company, Bradley-Crocker Telephone Company, York-Troy Telephone Company, Wallace Farmers Telephone Company, the Vivian-Wallace Telephone Company, and the Olean Telephone Company have failed to enter into written contracts with connecting companies, and consequently have failed to file certified

copies of such contracts or agreements with the Board of Railroad Commissioners. It appears in evidence that the Butler Telephone Company has failed to collect its rental charges promptly; in fact, their books show that some individual subscribers are in arrears as much as \$80.

The record shows that the Lily Local Telephone Company, the Highland Telephone Company, and the Wallace Farmers Telephone Company are maintaining and operating free telephones in depots.

It appears from the record that the Lily Local, the Wallace Farmers, and the Vivian-Wallace Telephone Companies are imposing the other line charge for the delivery of toll messages on rural lines.

It also appears that the switching rate for rural lines existing between the Lily Local Telephone Company and the York-Troy Telephone Company is on the basis of 35 cents per month per phone where said rate is not paid in advance. It also appears that several of the companies, parties to this case, are on a flat amount per line basis for switching of rural party lines, instead of so much per month per phone.

It is also a matter of record that the York-Troy Telephone Company and the Vivian-Wallace Telephone Company require an intending subscriber to purchase stock before receiving service.

It also appears from the record that the Bradley-Crocker Telephone Company, the York-Troy Telephone Company, the Wallace Farmers Telephone Company, and the Vivian-Wallace Telephone Company permit the practice of the individual stockholders to own a part of the equipment.

It is also a matter of record that the compensation paid to the Conde Telephone Company and the Olean Telephone Company for originating and terminating toll messages is on the flat basis of so much per month or per year, instead of the 5 cent per message in and out, as provided by law.

The evidence further discloses that the Bradley-Crocker Telephone Company, the Lily Local Telephone Company, the York-Troy Telephone Company, the Wallace Farmers Telephone Company, the Garden City Telephone Company, and the Conde Telephone Company, and in fact nearly all of these telephone companies, have connections with other exchanges or lines for

which a flat rate of so much per line is being imposed for switching, or the arrangement is on a free interchange basis.

It is also a matter of record that some of these companies have failed to make report to the Board as required.

The evidence also discloses that some of the rural lines that have switching arrangements with the town exchanges refused to be responsible for the charges accruing to subscribers on their lines; in other words, compel the town exchange company to collect the individual accounts of the connecting companies' subscribers.

Taking these matters up in the order in which they were considered in the findings, the different companies interested should be required to discontinue the practice of charging a different rate to stockholders than to nonstockholders. Each of these companies having received copies of the decisions in regard to this matter, and having full knowledge that the practice of favoring stockholders, either in the payment of charges or in any rule, regulation, or service extended to them by the company, is unlawful and constitutes unjust discrimination under the act, and was so held in the general investigation decided August 21, 1913, in which this Commission held that this practice was clearly violative of the provisions of § 10, chapter 289, of the Laws of 1909 as amended by chapter 218 of the Laws of 1911, and that any person or telephone company, and any officer or agent of any telephone company, violating the provisions of that section, are subject upon conviction to a fine of not to exceed \$200, it will be necessary for these companies to establish a regular schedule of rental rates and charges, incorporating therein any rules or conditions that they may impose. This schedule of rates should be filed with the Commission, and the charges, terms, and conditions therein specified should apply to each and every subscriber of the company alike, regardless of whether said subscriber is a stockholder or not.

In connection with the failure of certain companies to file contracts with the Commission, it will be considered sufficient to quote § 5 of the decision in the general investigation in which it was held that "our statute requires all rates of every kind, and all contracts, agreements, and franchises to be filed in the office of the Board of Railroad Commissioners. If the contracts are to

be filed as required by the statute, then they must be in writing, or it will be impossible to file them. It follows as a consequence that all agreements and contracts of every kind between telephone companies and every person, firm, or corporation, or a municipality in any manner affecting the conduct of the telephone business, must be in writing and filed." The companies parties to this case will be required to put all contracts and agreements affecting telephone service of any and every company into writing, and to file certified copies of such contracts and agreements, as well as copies of all schedules of rates and all franchises and ordinances, with the secretary of the Commission.

In regard to the Butler Telephone Company, or any other telephone company permitting its rentals or charges to become past due and run for an indefinitely long period, it is, to say the least, poor business practice, and the policy should be discontinued. It costs a telephone company money to maintain and operate its plant, and all subscribers should pay their rentals promptly, and in fact, a reasonable advance payment is considered good practice. No subscriber should be allowed to become in arrears to any such extent as it appears the Butler Telephone Company allowed some of its subscribers to do. Prompt payment should be insisted upon, and where a subscriber fails or refuses to pay his rental promptly and in accordance with the rules of the company, he should be refused service until such time as proper guaranties were made that all future bills would be paid; and in connection with the collection of past-due rentals, the company's recourse would be an action in court to recover the amount due.

Those companies having installed telephones in depots, for which they are receiving no compensation, should desist from this practice for the reason that it is unlawful to extend service to one party on a different basis than the services rendered to anyone else. This practice is illegal and contrary to the provisions of the anti-pass law of this state, which absolutely prohibits the furnishing of free telephone instruments or free telephone service. As was held in the general investigation decided August 21, 1913, a copy of which decision was served upon the interested companies here, that "while it is true that it would be an accommodation to the public to be permitted to telephone to the stations inquiring about the arrival and departure of trains and

the arrival of freight and cars, it is also true that our statute forbids the furnishing of this service free of charge to the railroad company and its employees, and as a consequence the same rates must be charged the railroad companies and their employees as to other subscribers for the same class of service."

Those companies that are permitting or exacting an added charge for the delivery of toll messages to a rural line, which in effect makes a different rate for a message in one direction than in the other, should discontinue this practice immediately. Section 6 of the telephone law provides that all terminal fees for incoming and outgoing toll messages shall not exceed 5 cents for any message originating or terminating in South Dakota, unless otherwise ordered by the Board of Railroad Commissioners. Up to this time no order has ever been issued by the Board disturbing the 5 cent terminal fee fixed by law. The 5 cent terminal fee on incoming and outgoing toll messages, having been fixed by the legislature, is presumed to be reasonable, and to afford compensation for all of the services in connection with the toll message, both in the originating and in the terminating exchange, as well as for the service to deliver a toll message over a rural line which is connected with a local exchange, whether that rural line be owned and operated by the local exchange or connected with it on a switching basis. It has been held in former cases that the town exchange, together with rural lines owned and operated by it, or rural lines connecting with it on a switching basis, constitutes an exchange or unit for telephone service, and that in the delivery or transmission of toll messages the 5 cent terminal fee on all incoming and outgoing toll messages applies as a compensation for all of the service rendered at either unit. In other words, the exchange at the point where the message originates should have for its services 5 cents, and for the service of delivering the message at the exchange where it terminates there should be a compensation of 5 cents, and no more. In this connection the attention of the companies is directed to § 13 of the telephone law, which prescribes a penalty for the violation of the provisions of the act, where no other penalty is provided, and which reads as follows, to wit: "Every owner or operator of a telephone line, and any officer or agent of any telephone company as defined in § 1 of this act, who shall violate, neglect, fail, or

refuse to comply with any provision of this act, or who shall violate, neglect, fail, or refuse to comply with any lawful order, rule, or regulation of the Board of Railroad Commissioners of this state, shall, upon conviction thereof, be punished by a fine of not less than two hundred dollars (\$200) nor more than one thousand dollars (\$1,000) in the discretion of the court."

The arrangement made between the Lily Local Telephone Company and the York-Troy Telephone Company, whereby it is provided that 35 cents per month per phone is to be paid for switching rural party lines, must be changed, and a contract entered into establishing a switching rate not in excess of 25 cents per month per phone for each phone on any given party line, for the reason that the law expressly fixes the maximum charge that may be made for party-line switching in this state at 25 cents per month for each telephone instrument.

The policy of permitting individual subscribers or stockholders to own any part of the equipment going into the construction of a telephone plant is contrary to telephone practice, for the reason that it makes it impossible for the company to properly maintain, operate, or police its lines; in fact, often creates dissension and tends to create discrimination in the practices of the company. The companies indulging in this practice will be required to discontinue same, and the method employed by other companies where a like order has been issued has been to purchase the equipment from the individual at what it is worth, and rearrange their stock issues on the basis of the new investment.

Another policy that has been condemned is that of a company requiring an intending subscriber to purchase stock before he would be given service. Many people living in the territory covered by a telephone company might desire telephone service, and not be in a position to purchase stock, and this is considered a requirement that is unnecessary, impractical, and that it works a hardship on the public. In other words, when a company undertakes to give telephone service in a given territory, it should provide that service at reasonable rates to whomsoever desires same. By this it is not meant that a company would be compelled to build an unreasonable distance in order to give a party telephone service. What would be considered a reasonable distance would depend upon the facts in each case, and what might

be a reasonable distance in one case would not necessarily be a reasonable distance in all cases.

In regard to those telephone companies that are now paying the long-distance telephone company on the basis of so much per month for originating and terminating messages, including possibly some other service such as switching of rural lines, rent of poles, etc., should be discontinued and contracts entered into for each service rendered, the law having fixed the maximum compensation for switching of rural lines at not to exceed 25 cents per phone and the terminal charges for originating or terminating long distance calls at 5 cents per message. Where the compensation for this service is fixed in a flat sum, it is impossible to determine whether the compensation is not more than the maximum allowed by law and consequently illegal, so that the companies will be required to enter into contracts stating in detail the terms and conditions that apply to each class of service for which compensation is paid or received. The basis adopted by many, if not all, of the telephone companies in this proceeding, is improper and illegal inasmuch as they have fixed and established a flat rate of so much per month or year per line, instead of complying with the provisions of the law which require that the charge for switching of rural party lines shall not exceed 25 cents per month per phone.

Another matter that should receive the attention of the companies interested is the practice of granting free interchange of service with different companies. While it is true that there, no doubt, is some benefit to be derived from an extended opportunity to converse over a considerable territory by means of rural lines, it is a fact, nevertheless, that where this practice is indulged in to too great an extent, it creates such a congested condition that the service loses in efficiency, and in fact it becomes impossible, or nearly so, for anyone to get the service that they are entitled to; and further it is a discrimination for a telephone company to grant free interchange of service with one telephone company and require another telephone company to pay a charge therefor. Switching for telephone lines or companies costs money, and the telephone line or company that is responsible for the switching should be the party to pay for same. In other words, the subscribers of the rural line who receive switching service over an

exchange should be required to pay at least the actual cost of such switching, and in no case should this amount exceed 25 cents per month per phone.

The cost of operating a telephone system must necessarily be paid by the public, and if the cost of switching rural-line phones is not borne by the subscribers getting the service, necessarily the rental rates of the town subscriber will be increased to the extent of the cost of doing this rural party-line switching.

Some of the companies having failed to report to this Commission, they are hereby admonished that the law requires reports to be made in conformity with the rules and regulations prescribed by the Commission, and that a penalty attaches for the failure to comply in full in this regard.

The question has been raised by the evidence as to who should be responsible for the payment of toll messages and for the payment of switching charges on lines switched at an exchange. It has been held in other cases before the Commission that the company owning the line should be responsible to the exchange company for the amount of all toll messages and switching fees that may accrue to subscribers on its lines. This is considered a reasonable rule, and any other arrangement places an undue burden on the exchange, and in fact would require them to make collections from individuals over whom they had no control. In other words, the owner of the line should be responsible to the exchange for all telephone bills run by its subscribers, as it is in position to refuse them service unless bills are paid.

It appears that none of the companies in this proceeding have been in the practice of setting aside anything to take care of depreciation. This is a matter that does not require any extended discussion, as it is admitted by all practical telephone men that it is necessary and good business policy for a company to set aside out of its earnings a reasonable percentage of the value of its plant to take care of the item of depreciation. While this item does not show up to its full extent until a late period in its life, it is, nevertheless, a fact that it is taking place all of the time and should be provided for during each and every year in the life of the plant; otherwise, at the time that the actual replacement of the plant is found necessary, it will be a severe burden

upon the investor, and generally the public also suffers, as the company is not in a position to give efficient service.

ORDER.

In this cause the Commission having made and filed its decision containing its findings of fact and conclusions, it is therefore ordered, considered, and adjudged that the telephone companies involved in this proceeding cease and desist from the practice of discriminating between those subscribers who are stockholders and those subscribers who are not stockholders, by charging a different rate to those who are not stockholders than to stockholders, and that from and after the service of this order, each of said telephone companies charge to its stockholder subscribers the same and identical telephone rental and rates which are charged to subscribers who are not stockholders.

It is further ordered, considered, and adjudged that each of the telephone companies parties to this proceeding cease and desist from charging and collecting an assessment for the payment for telephone service; and, further, that each of said companies be and hereby is required and commended to establish a just and reasonable schedule of yearly rental rates, and a non-subscriber rate for local service, if any is adopted, and that said schedule of rates be filed with this Board within thirty days from the date of service hereof; said rental rates should be sufficiently high to pay all legitimate operating and maintenance charges, and set aside not less than 6 per cent, nor more than 8 per cent, of the value of its property to take care of depreciation (the treatment of and the amount in the depreciation fund to be reported to the Commission in the annual report of said company), and to allow the stockholder a fair return on his investment.

It is further ordered that each of the companies herein be and hereby is required and directed to enter into contracts or agreements in writing with all other companies with which it is connected on a switching basis, or in any manner whatsoever affecting telephone service, or the rates therefor; and to file with the secretary of the Commission within thirty days certified copies of such contracts or agreements; and, further, each of said companies is required and commanded to file with the

secretary of the Commission, within thirty days, certified copies of all franchises and ordinances operated under by it.

It is further ordered, considered, and adjudged that each of the telephone companies, parties to this proceeding, that have or are now granting free telephones or free telephone service in depots, cease and desist from the practice, and that service be given to the railway company at the same rates and under the same terms and conditions as apply to other business phones.

It is further ordered, considered, and adjudged that each of the telephone companies, parties to this proceeding, that have in the past or that are now permitting or requiring the collection of an added line charge for the delivery of toll messages over rural lines, cease and desist from the practice, and that from and after the service of this order, each of said telephone companies discontinue the making of an added charge for the delivery of toll messages on a rural line.

It is further ordered that the companies making a charge for rural party-line switching in excess of 25 cents per month per phone cease and desist from this practice, and, from the date of service of this order, enter into contracts which prescribe a rate that will not exceed 25 cents per month per phone.

It is further ordered that those companies that are now on a flat basis of so much per month or year per line cease and desist from using this method of contracting for switching rural party lines, and that the companies interested enter into contracts covering this switching basis of not to exceed 25 cents per month per phone.

It is further ordered, considered, and adjudged that each of the companies parties to this proceeding be required and commanded to purchase and own all of the equipment used in the conduct of its business.

It is further ordered, and the interested companies are hereby directed and commanded, to cease and desist from the practice of requiring intending subscribers to purchase stock before receiving telephone service.

It is further ordered that exchange companies who are now receiving a flat rate per month for originating and terminating toll messages proceed immediately upon the service of this order to enter into contracts with the long-distance companies on the

legal basis of 5 cents on each incoming and outgoing toll message, and where some other service than that of originating or terminating toll messages is included in the present contract, separate contracts should be entered into covering these items.

WISCONSIN RAILROAD COMMISSION.

IN RE JUST COMPENSATION FOR JANESVILLE WATER COMPANY BY CITY OF JANESVILLE FOR PROPERTY OF SAID COMPANY USED BY THE PUBLIC.

Municipality — Purchase — Compensation — Partial payment by assumption of bonds.

A previous order prescribing the terms upon which the property of a water company was to be taken over by a city was modified pursuant to stipulation between the parties, so as to require payment for the property to be made at the date of transfer instead of six months thereafter, and so as to permit partial payment to be made by the assumption of the bonds outstanding against the company.

Appeal and review — Not prejudiced by modification of order.

It was provided in an order of the Commission modifying the terms of a previous order relating to the taking of the property of a water company by a city in respect to payment, that the rights of the water company to a complete review as to the amount of compensation to which it was entitled should not in any manner be prejudiced thereby.

[February 20, 1915.]

JOINT application for modification of previous order relating to the taking of the property of a water company by a city; granted.

By the **Commission**: Whereas, on January 30, 1915, this Commission did enter an order in the above-entitled matter whereby it was determined that the just compensation to be paid to the Janesville Water Company by the city of Janesville for the taking of the property of said company actually used and useful for the convenience of the public should be fixed at the sum of \$265,000, and that in addition to that sum the said city of Janesville was to pay the Janesville Water Company for material and supplies on hand at the date of the taking of the said plant and such new additions as had been made since July 1, 1914, the price to be paid to be determined by stipulation be-

tween the parties or by this Commission in event the parties found themselves unable to agree upon the price; and it was further ordered that the said Janesville Water Company should transfer possession of the property to the city of Janesville on or before the 1st day of April, 1915, and that the city of Janesville pay to the said Janesville Water Company the compensation fixed in the order, and the sum determined upon as the price to be paid for material and supplies and new additions made as above set forth, within six months after the date of the order, with interest at the rate of 6 per cent per annum from the date of the taking possession of said plant by said city until fully paid; and—

Whereas, there are now outstanding first-mortgage bonds of the Janesville Water Company to the amount of \$186,500, bearing interest at the rate of 5 per cent per annum, payable semi-annually, and due January 2, 1927, secured by a trust deed or mortgage to Frank H. Jones, of Chicago, Illinois, as trustee, made the 2d day of January, 1907, and recorded in the office of the register of deeds of Rock county, June 7, 1907, in volume 105 of mortgages, which said trust deed or mortgage is, under the stipulation of parties and by this order, to remain a first lien in and upon the plant and property of the Janesville Water Company to be taken over by the city of Janesville under these proceedings; and—

Whereas, the said Janesville Water Company and the city of Janesville, parties to these proceedings, by their respective attorneys, have entered into and filed with this Commission a stipulation that said city of Janesville accept the waterworks plant of the Janesville Water Company on the 1st day of April, 1915, subject to said outstanding bond issue of \$186,500, and that said city shall, on April 1st, pay to the Janesville Water Company the difference between the amount of said bonds, with accrued interest thereon up to April 1, 1915, and the said sum of \$265,000, with such additions thereto for materials on hand at the time of the taking possession of said plant and for such new additions as have been made to said plant since July 1st, 1914, such additional sums to be determined by stipulation between the parties, or by this Commission in event the parties find themselves unable to agree upon the same; and—

It being further stipulated that the said order of the Railroad Commission so made on the 30th day of January, 1915, be amended in its third and fourth paragraphs as hereinafter in this order set forth, and—

It being further stipulated that said order is entered into for the purpose of avoiding complications with reference to the bonds now outstanding and secured by said trust deed, and is not to be construed as affecting the right of the Janesville Water Company to a full and complete review of the order of this Commission as by law provided as to the amount of compensation to which said Janesville Water Company is entitled for the taking of its plant; and—

Whereas, it appears that the stipulation thus entered into will be of mutual benefit to the parties of this said proceeding, and, if carried out by the parties according to its terms, will be in substantial compliance with said order of the Commission;—

Now, Therefore, be it remembered, That the Janesville Water Company and the city of Janesville are hereby authorized to effect the transfer of the waterworks plant of the Janesville Water Company to said city in accordance with the terms of the stipulation entered into between said parties as aforesaid on the 12th day of February, 1915.

The third and fourth paragraphs of the order of this Commission in said matter entered on the 30th day of January, 1915, are amended to read as follows:

It is further ordered that the said Janesville Water Company transfer possession of said property to the said city of Janesville on or before the 1st day of April, 1915;

It is further ordered that the said city of Janesville pay to the said Janesville Water Company at the time of said transfer the said sum of \$265,000, plus the additional sums mentioned in paragraph 2 of the original order herein, and less the sum of the now outstanding bonds, \$186,000, and accrued interest to April 1, 1915, which said bond issue is to remain a lien upon said plant, and said plant is to be taken by said city of Janesville subject thereto.

This said order shall not be construed as in any manner affecting the right of the Janesville Water Company to full and complete review as by law provided as to the amount of compensa-

tion to which the said Janesville Water Company is entitled for the taking of its plant, and none of the rights of the Janesville Water Company in that respect are herein or hereby in any manner prejudiced.

Railroad Commission of Wisconsin, Carl D. Jackson, Halford Erickson, Walter Alexander, Commissioners.

Note.—For original opinion and order, see ante, 178.

WISCONSIN RAILROAD COMMISSION.

IN RE LADYSMITH LIGHTING COMPANY.

Valuation — Book value — Objections to as basis of rates.

Mere book value is objectionable as a basis for determining rates, for the reasons that such value generally includes cost of discarded property which has only a scrap value, brings in such items as organization, stock watering, stocks at a bonus, etc., and does not include appreciation or depreciation.

Apportionment — Capacity and output expenses — Electric lighting.

In determining the cost of electric lighting service, the Commission apportioned 65 per cent of the total costs to capacity and 35 per cent to output expenses.

Rates — Electricity — Readiness to serve.

In determining a proper rate schedule, consideration should be given to the fact that an electric plant must always have a certain amount of equipment ready to serve a consumer, and that the larger the consumer, the more equipment is necessary.

Rates — Electricity — Length of time installation is used.

Electric rates should be so designed that the number of hours a day a consumer uses his installation, whether for a long or a short period, will determine whether he shall receive a relatively low rate or not.

Rates — Electricity — Straight kilowatt hour.

A straight kilowatt hour rate provides an equitable return only in the case of one specific rate of consumption.

Rates — Electricity — Low charge for power.

A rate for electric lighting being prohibitive to anyone desiring to use a considerable amount of current for power purposes, as low a rate for power as is consistent with operating conditions should be established, since it is the duty of a company to extend its service to reach as many consumers as possible.

Rates — Electric power.

The Commission ordered the adoption of a tentative electric power

rate of 50 cents per month per horse power of nominal rated capacity plus 4 per cent net, or 5 per cent gross, per kilowatt hour of energy consumed.

Rates — Electricity — Small motors.

A lighting rate for electricity may be successfully applied to those consumers who have small motors connected to their lighting circuits.

Rates — Electricity for pumping water — Off-peak load.

The fact that electric current to operate a city's pumping station can be supplied off peak should entitle the city to as low a rate as is consistent with operating conditions.

Rates — Electricity for pumping water.

A tentative rate of $2\frac{1}{2}$ cents per kilowatt hour, for the use of 68,000 kilowatt hours per year, off peak, for pumping water, was held equitable both to a waterworks and to the electric utility, where it necessitated no additional purchase of equipment.

Rates — Electric pumping — Desirability of pumping load at moderate rate.

A hydro-electric system depends so much on the full utilization of water in order to secure economical operation that a pumping load may be desirable and worth taking on even at a moderate rate.

Rates — Operating costs — Pumping.

The cost of electric pumping operation becomes directly proportional to the amount of work performed, and practically ceases the moment the motor is stopped.

Rates — Electric pumping — Minimum charge.

A minimum monthly charge of \$100 for electric pumping was held equitable where the rate was $2\frac{1}{2}$ cents per kilowatt hour, based on an assumed use of 68,000 kilowatt hours per year.

Return — Additional equipment for electric pumping.

An electric lighting company should be entitled to at least 12 $\frac{1}{2}$ per cent on an investment in additional equipment for electric pumping, to cover the necessary interest, depreciation, and tax charges.

Rates — Electricity — Flat-rate basis.

The amount to be paid under a system of flat rates depends almost wholly upon the fixtures, and not upon the amount of current used; and while an estimate can generally be made of the amount of current a certain group of lamps will consume, this estimate cannot be determined as accurately as is considered necessary in arriving at equitable rates.

Rates — Electricity — Minimum charge — Discrimination.

The minimum charge covers certain item in the operating expenses of electric plants which bear little or no relation to the current sold, such as the expense of reading and maintaining meters, delivering bills, and carrying customers' accounts; and when no minimum charge is made, the rates are therefore in a sense discriminatory.

Rates — Electricity — Incandescent commercial lighting — Minimum charge — Meter rental.

A minimum charge of \$1 per month for incandescent commercial

lighting was fixed by the Commission, and an additional meter rental of 25 cents per month was abolished as being of doubtful legality.

Records — Cost of service — Electric utilities.

Reliable, adequate, and permanent records, such as those relating to the division of the demand among the different classes of service rendered by the utility, the record of kilowatt hours generated, cost data, amount of service produced, proper consumer statistics, etc., are invaluable, not only for the use of the Commission, but as an aid to more efficient plant operation, and should therefore be kept by an electric lighting utility company.

Service — Electricity — Adequacy.

Consumers cannot be required to endure poor service any longer than is absolutely necessary to complete the work of reconstruction, repair, and testing required to render an inadequate plant efficient.

Rates — Electricity — Commercial lighting.

An electric lighting company was ordered to discontinue its present schedule of rates and to substitute therefor a schedule for commercial lighting based upon a primary, secondary, and excess rate, dependent upon the size of installation and hours of use, the service to include electric energy furnished for appliances other than lighting equipment, when the accurate rated capacity of such appliances did not exceed 2 K. W.

Rates — Electricity — Active load.

In a schedule of rates based partly on the active load, the Commission ordered incidental power appliances, such as flatirons, toasters, fans, etc, to the amount of 1,000 watts rating, not to be considered in determining such load.

Rates — Electricity — Percentage of active load.

In a schedule of electric lighting rates for residences, dwellings, flats, and private houses, based partly upon the active load, it was held that 60 per cent of the total connected load should be taken as active where the total connected load was equal to or less than 500 watts nominal rated capacity, and 33½ per cent of the total connected lighting load over and above 500 watts should be taken as active where the installation exceeded 500 watts nominal rated capacity.

Rates — Electricity — Percentage of active load.

In a schedule of electric lighting rates for stores, offices, business and professional places, private halls, passenger depots, theaters, etc., based partly on the active load, 70 per cent of the total connected load was ordered to be taken as active where the total connected load was equal to or less than 2½ kilowatts nominal rated capacity, and 55 per cent of the total connected load over and above 2½ kilowatts to be taken as active where the installation exceeded 2½ kilowatts nominal rated capacity.

Rates — Electricity — Percentage of active load.

In a schedule of electric lighting rates for county and city buildings, schools, factories, industrial establishments, shops, stables, garages, and warehouses, based partly upon the active load, 55 per cent of the total connected load was ordered to be taken as active.

Rates — Meter basis.

Electric lighting rates for all consumers with at least 100 watts connected were ordered metered.

Rates — Electricity — Power — Service included.

Service and power rates were ordered to include electric energy utilized for motive and miscellaneous lighting service, such as current for stereopticons, moving-picture machines, photographer's arts and rectifiers, when separately metered from lighting.

Rates — Electric power — Percentage of active horse power.

Ninety per cent of the first H. P. of nominal rated capacity, of motor installed as indicated on the manufacturer's name plate, 70 per cent of the next 20 H. P., 50 per cent of the next 30 H. P., and 40 per cent of all over 60 H. P., were ordered to be taken as active H. P. for the purpose of fixing power charges based partly upon the active load.

Rates — Electricity — Minimum charge — Small motors.

A minimum monthly charge of \$1.25 for small electric motors was ordered by the Commission.

Rates — Electricity — Minimum charge — Large motors.

The capacity charge per horse power was ordered to constitute a minimum charge for large electric motors.

Rates — Electricity — Discount for prompt payment.

An electric utility was ordered to bill all consumers at a gross rate, the difference between a gross rate and net rate of 1 cent per k.w. hr. being allowed to constitute a discount for prompt payment within ten days of the date of bill.

Rates — Electricity — Penalty for failure to pay promptly.

Flat-rate consumers of electricity were ordered to be assessed a 10 per cent penalty for nonpayment of account within ten days following the date of bill.

Rates — Bills for service — Statement of active load.

An electric lighting utility was ordered to have all bills state plainly the connected load of each consumer and the percentage considered active, in computing a rate based partly upon active load.

Service — Tests — Compliance with Commission standards.

An electric lighting company was ordered to make such additions and tests as would render it able to supply its consumers with reasonably adequate service, and to observe and comply with the adequate and serviceable standards ascertained and fixed by the Commission in the rules established by its order of August 9, 1913.

[March 4, 1915.]

INVESTIGATION on motion of the Commission of the service and rates of the Ladysmith Lighting Company; company ordered to adopt a new schedule of rates and to comply with the service standards of the Commission.

By the **Commission**: The investigation in the above-entitled matter was based upon a request of one of the councilmen of the city of Ladysmith in behalf of the city council to make an examination of the lighting and service conditions of the Ladysmith Lighting Company.

On December 16, 1913, the matter was heard in the office of the Commission, the following appearances were entered: O. J. Folge, City Attorney, on behalf of the city of Ladysmith; L. E. McGill, Attorney for the Ladysmith Lighting Company; A. C. Thompson, Mayor of Ladysmith; H. W. True, Secretary of Ladysmith Lighting Company; H. A. Dimock, Councilman, city of Ladysmith.

The points upon which information is desired as indicated by the testimony at the hearing are as follows:

1. Determination of an equitable rate for street lighting.
2. Determination of proper minimum charge.
3. Elimination of meter charge.
4. Determination of reasonableness of the lighting rate of 10¢ per kw. hr.
5. Investigation of the relation existing between the Ladysmith Lighting Company and the Ladysmith Power Company (now Rusk County Construction Company.)
6. Determination of adequacy of service.
7. Objection of certain consumers being metered while others are on a flat rate basis.

In addition to the above a rate for electric pumping must be determined.

The defendant, the Ladysmith Lighting Company, in its answer to the complaint alleges that the lighting service of the city of Ladysmith is in all respects reasonable and adequate, and that the rates charged for such lighting service are reasonable and proper, and prays that the complaint be dismissed.

The findings and order in this case are chiefly based upon such reports and other facts as could be obtained from the respondent. If experience shows that some of the conclusions in this case should be altered, the necessary modifications can be made when necessary.

Considerable correspondence upon many vital points has been carried on between the Commission and the interested parties.

The question of the relationship and agreements between the Ladysmith Lighting Company, the Rusk County Construction Company, and the Menasha Paper Company and allied companies, has taken considerable time, due to delay and failure of officials to supply data. The Commission has been, perhaps, rather lenient in this case, expecting that the officials would be glad to coöperate with us in every respect in connection with this rate and service investigation; but it appears to us now that the investigation cannot be delayed longer, but that steps must be taken to get the matters involved upon a sound basis. Longer delay is unnecessary when it is understood that the case will be reopened any time upon additional salient facts being presented to the Commission.

The rate schedule now in force is as follows:

Meter Rates:

Minimum monthly charge, \$1.00

Current, 10¢ per kw. hr.

Meter rent, 25¢ per month

Flat Rates:

Residence.

1 light \$0.50 per month

2 lights .75 " "

5 " 1.25 " "

All above, each .25 " "

Hotel, saloons, stores, 25¢ per light.

All lights figured on basis of 16 c.p. lamps.

Street Lighting.

44-500 watt. 110 volt, a.c. multiple tungsten lamps burning 2150 hours per annum on a moonlight schedule—Rate \$55.00 per lamp per year.

DEVELOPMENT OF PROPERTY.

The facts relating to the development of the property of the Ladysmith Lighting Company are of importance as affecting both the valuation and the reasonable return to the property.

It appears that during the past four years the plant has been practically rebuilt,—new lines extended and better equipment installed, so that the plant from being in a run-down condition is, with but slight additional expenditure necessary, in a position to operate efficiently.

The Ladysmith Lighting Company purchases power from what was the Ladysmith Power Company, whose name has now been changed to the Rusk County Construction Company, who in turn purchases the power from the Menasha Paper Company, which is itself a lessee. The arrangements are reported to in-

clude ample reserve power available at all times in case of accidents.

VALUE.

The original cost of the plant of the Ladysmith Lighting Company is not known in the absence of record information. The book value as noted in the report of the utility for the year ended June 30, 1913, was \$35,472.47, while for the following fiscal year, ended June 30, 1914, the reported book value was only \$29,707.87. An appraisal of the property used and useful for electric service was prepared by the Commission, and disclosed the following costs to reproduce new and existing values, including materials and supplies of date November 1, 1913:

Table I.

	Street Lighting		Com're'l Lighting		Total	
	Cost New	Present Value	Cost New	Present Value	Cost New	Present Value
A. Land						
B. Transmission & Dist.	\$2,093	\$1,574	\$ 7,571	\$ 5,977	\$ 9,664	\$ 7,551
C. Bldgs. & Misc. Struct.						
D. Plant Equipment	501	383	3,676	2,811	4,177	3,194
E. General Equipment			340	229	340	229
Total	\$2,594	\$1,957	\$11,587	\$ 9,017	\$14,181	\$10,974
Add 12% (See note below)	311	235	1,391	1,082	1,702	1,317
Total	\$2,905	\$2,192	\$12,978	\$10,099	\$15,883	\$12,291
H. Materials & Supplies	238	227	833	822	1,071	1,049
Total	\$3,143	\$2,419	\$13,811	\$10,921	\$16,954	\$13,340
J. Non-Operating					292	248
Total	\$3,143	\$2,419	\$13,811	\$10,921	\$17,246	\$13,588

Note.—Addition of 12 per cent to cover engineering, superintendence, interest during construction, contingencies, etc.

Respondent objected to the appraised value of a number of small items, alleging that the same were undervalued. A typewriter and adding machine, purchased in February at a cost of \$250, together with a safe costing \$36.50, were claimed by respondent to be too low. A new transformer which had never been connected to the system, it was alleged, was undervalued. In addition to the above, new wire put up just prior to the time of the appraisal, respondent claimed was depreciated abnormally.

These items have been further examined in the light of the above allegations, and it appears certain allowances must be considered, due to the fact that for the purposes of this case the aim was an approximate idea of the value of the property used and useful for rate-making purposes, rather than a very detailed appraisal.

The next table shows the balance sheet as it appears in the corrected annual report of this company for the year ended June 30, 1913.

TABLE II.

Assets.		
Property and plant	\$35,472.47	
Cash	1,105.08	
Accounts receivable	4,099.15	
Materials and supplies	1,548.04	
Total assets		\$42,224.74
Liabilities.		
Capital stock	\$23,500.00	
Notes and bills payable	4,970.62	
Accounts payable	5,891.53	
Matured interest on funded debt unpaid	180.00	
Matured interest on notes and bills payable, unpaid	174.85	
Surplus	7,508.34	
Total liabilities		\$42,224.74

While a comparison of the assets and liabilities, as they stand in the balance sheet, indicate that to-day the former might exceed the cost of reproducing the plant, this is a surface indication only. When the liberal figure at which the plant was reported in 1907, one year after its completion, and which exceeds the cost new as now determined, are considered, and when furthermore due allowance is made for the relation which exists between the current assets and the current liabilities, and when depreciation and various other facts which bear upon this matter are given proper weight, it appears that the difference between the original cost and book value of the plant, on the one hand, and its cost of reproduction, as already given, on the other, is minimized.

Some objections to book value in determining rates are: (1) Such value generally includes cost value of discarded property, as deserted stations, etc, which is only scrap value; (2) peculiar items are brought in, as organization, stock watering, stocks at a bonus, etc.; (3) does not include appreciation or depreciation.

This investigation was delayed by the utility, as noted previously, so that an additional report became available for our analysis after the foregoing was written. The balance sheet in this report for the year ended June 30, 1914, is as follows:

TABLE III.

Assets.		
Property and plant	\$29,707.87	
Cash	685.63	
Material and supplies	1,300.53	
Deficit	2,735.13	
		\$34,429.16
Liabilities.		
Capital stock	\$15,000.00	
Funded debt	8,500.00	
Notes	3,900.00	
Accounts payable	7,029.16	
		\$34,429.16

Comparing the above with Table II. it is noted that property and plant has decreased \$5,764.60; accounts receivable item has been eliminated, cash decreased nearly half or \$419.45, while materials and supplies has remained about the same, decreasing only \$247.51. Liabilities, on the other hand, show an increase in accounts payable of \$1,137.63 and decrease in notes payable of \$1,070.62, and material accounts of \$354.25, resulting in an excess of liabilities over assets of \$2,735.13, the total decrease over the previous year being \$7,795.58.

COST OF SERVICE.

An appraisal of the property to determine its worth for rate-making purposes is necessary in order to serve as a basis for determining what the utility is entitled thereon for interest and profit. To these latter sums a reasonable amount for operating expenses and depreciation must be added.

The following table presents the reported operating statements for the years ended June 30, 1910, to 1913, inclusive, and for eleven months ended May 31, 1914. Certain adjustments have been made as noted in the table to determine the amounts available for depreciation and interest. To determine the valuation of the plant for the periods shown, the cost new as of 1913 was taken as the basis, and the yearly addition to plant deducted to arrive at the value for each period.

TABLE IV.
Ladysmith Lighting Company.
Comparative Operating Statements—Years ended, June 30.

	1910	1911	1912	1913	(11 Mos.) 1914
Revenues—					
Com'l Ltn'g. earnings	\$5,102.12	\$7,015.42	\$ 8,400.54	\$9,592.82	\$9,055.41
Municipal Con't.	2,865.00	2,865.00	2,865.00	2,926.35	2,377.62
Total	\$7,967.12	\$9,880.42	\$11,265.54	\$12,519.17	\$11,433.03
Expenses—					
Hydraulic Power Gen- eration—Labor		\$600.00	\$560.00	\$621.20	\$550.00
Hyd. Power purchased	3,396.96	3,400.00	3,400.00	3,400.00	2,102.50 ²
Misc. Power Sups. & Expenses		2,350.00 ¹	80.00	40.83	76.75
Total	\$3,396.96	\$6,350.00	\$4,040.00	\$4,062.03	\$2,729.25
Distribution—					
Labor	\$260.00	\$225.00	\$800.00	\$1,823.55 ¹	\$1,525.00 ¹
Supplies & Expenses..	216.06	250.00	1,410.00 ¹	1,656.29 ¹	
Main & Dist. systems	386.00	200.00	400.00		3.92
" transformers ...	18.00	40.00	25.00	150.00	
" meters	26.00	40.00	100.00	514.55	11.95
Total	\$906.06	\$755.00	\$2,735.00	\$4,144.39	\$1,540.87
Consumption—					
Commercial lamp sup- plies & renewals				\$3,185.30 ¹	
Municipal contract lighting—Trimming and inspecting mu- nicipal C. lamps	\$200.00	\$200.00	\$200.00	190.00	
Mun. C. lamps, Sups. & Incand. l p. renewals	188.00	200.00	470.00	147.63	
Maint. Mun. C. Ltn'g.	12.80	76.00	60.00		67.00
Total	\$400.80	\$476.00	\$730.00	\$3,432.93	\$67.00
Commercial—					
Collection expenses ..	\$300.00	\$382.00	\$396.00	\$168.00	\$39.95
Promoting of business	120.00	120.00	100.00	65.60	
Total	\$470.00	\$502.00	\$496.00	\$233.60	\$39.95
Total direct expenses	\$5,173.82	\$8,083.00	\$8,001.00	\$11,872.95	\$4,377.07
General	\$1,820.00	\$1,580.00	\$1,553.50	\$1,834.60	\$1,338.20
Undistributed	169.75	169.75		242.86	400.78
Total expense of Oper.	\$7,163.57	\$9,832.75	\$9,554.50	\$13,950.41	\$6,116.05
Taxes	\$178.50		\$214.20	\$225.00	\$252.96
Total above expenses	\$7,342.07	\$9,832.75	\$9,768.70	\$14,175.41	\$6,369.01
A. Amount available for depr. & int.	\$625.05	\$47.67	\$1,496.84	\$1,656.24³	
B. Amount available for depr. & int. after adjustment of ques- tionable items		2,347.67	2,496.84	3,343.76	
C. Estimated Cost New Ratio A to C	12,018.00	15,368.00	15,778.00	17,246.00	
" B to C	5.2%	0.31%	9.5%	9.6%	
		15.3 %	15.8%	19.4%	

¹ All or parts of these amounts properly chargeable to construction.

² Amount paid, Balance "Bills Payable."

³ Deficit.

The foregoing table indicates that by eliminating those items which should undoubtedly be charged to construction, there remains in almost every period listed an amount sufficient to provide for depreciation, interest, and profits upon the cost new.

Records not being available from which to determine the exact amounts expended yearly for construction and renewals, the amounts available for depreciation and interest may, however, be somewhat in error.

After examining the accounts available and other data bearing upon the income accounts, normal operating expenses have been determined. These have been compared with the expense of other plants operating under somewhat similar conditions as a check on their normality.

Normal Operating Expenses.	
Direct expenses plus general and undistributed	\$8,950.77
Taxes	252.96
Depreciation	776.07
Interest	1,087.04
Total	\$11,066.84

Apportioning these expenses along the lines followed by the Commission results in allocating 65 per cent or \$7,193.45 of the total to "capacity" and 35 per cent or \$3,873.39 to "output" expense. Apportioning these items to the two classes of service rendered by the utility, namely, street lighting and commercial lighting, it is found that the costs of these respective services are as follows:

Street lighting	\$2,146.97
Commercial lighting	8,919.87
Total	\$11,066.84

These calculations, while the facts upon which they are based are partly estimated, will, in our judgment, go far in substantiating the conclusions at which we have arrived.

On June 30, 1914, it appears there were 40 arcs in use. The cost per arc on this basis will amount to about \$53.67. At the present time it is understood a number of additional lights have been added. This fact, however, will not change the costs materially. All lamps now in use are 500 watt tungstens, burning in multiple.

Tungsten Street Lights.

The advent of the super-efficient tungsten lamps has resulted in many changes in street-lighting practice. These lamps have been "tried out" in various cities throughout the country, and appear to have fully measured up to the manufacturers' claims

of adaptability to street-lighting service. No one yet knows the effect of these powerful tungsten units on the economy of the situation. They are, however, undoubtedly efficient and simple to operate. They do not require trimming, and there are no considerable repairs or renewals, save for the lamps themselves, to be taken into account. At the time this is written nitrogen lamp fixtures have not been standardized, and cannot be until shapes and sizes of lamp bulbs are standardized. The best spacing and height for the various fixtures and lights used cannot be accurately determined until lamp and fixture standardization is completed. With similar specifications, good lighting in one place and bad lighting in another may easily result. While remarkable results have been obtained in many instances by the use of these lamps, it is certain that street lighting is in a phase of rapid transition, the result of which cannot yet be safely predicted.

No tests have been made at Ladysmith to determine the relative efficiency of the type of high wattage tungsten lamp and fixtures and the old enclosed arcs as employed there. With the proper fixtures, incorporating a suitable reflector, however, and with units properly spaced, the illumination with tungsten lamps is uniform to a high degree, and appears far superior to many of the results previously obtained with the old arc lights.

Commercial Lighting.

The meter rate for commercial lighting in force at the present time is what is known as a straight meter rate. That is, the exact rate is 10 cents per kw. hr. for all current consumed during the month. No other factor than the quantity of current consumed is taken into consideration in such a rate schedule. In previous opinions this Commission has pointed out that an electric plant must always have a certain amount of equipment ready to serve a consumer, and the larger the consumer the more equipment is necessary. Consideration should be given to this fact in determining the proper rate schedule. The rates should be so designed that the number of hours a day that a customer uses his installation, whether for a long or a short period, will determine whether he shall receive a relatively low rate or not. In working out the rates in the instant case, these principles have been

considered, and a schedule devised similar to the schedule prescribed for other utilities for which the Commission has had occasion to adjust rates. This schedule reads as follows:

10¢ net per kw. hr. for the first 40 hrs. use per month per kilowatt of active load.

8½¢ net per kw. hr. for the next 60 hrs. use per month per kilowatt of active load.

6¢ per kw. hr. for all current used in excess of 100 hrs. use per month per kilowatt of active load.

It is seen that the steps in the schedule depend upon the size of the installation, and that the small consumer reaches the low rates as soon as does the larger consumer. It is this feature of the rate that we deem commendable, in that it seems to us, at least, that it maintains a more just relation between the different sizes of consumers.

A straight kilowatt hour rate provides an equitable return only in the case of one specific rate of consumption. If the consumption is greater, the charge is too high; if less, the charge is too low.

In estimating the probable revenue under this schedule it should be noted that the results obtained are not absolute. The difficulties which beset such computations may be briefly enumerated as follows:

1. The large number of consumers at present on a flat rate basis.
2. The absence of complete consumer statistics for those consumers now metered; such as connected load incorrect, class of business not shown, etc.
3. Statistics for part of one year for certain consumers and for a different part of the year for other consumers.
4. No account could be taken of the probable increase in the business. This is of some importance, as it results in many shifts from a flat to a metered basis and thereby is likely to cause duplication in the figures.

Power Service.

There is at present no rate for power service distinct from the lighting rate of 10 per cent per kw. hr. Such a rate is prohibitive to any one desiring to use a considerable amount of current for power purposes, and for this and other reasons the following tentative power rate is suggested: 50 cents per month per horse power of nominal rated capacity plus 4 per cent per kw. hr. of energy consumed. It is the aim and duty of the utility to extend its service to reach as many consumers as possible, hence it is thought advisable to establish as low a power rate as is consistent with the operating conditions at Ladysmith. The suggested lighting rate may be successfully applied to those con

sumers who have small motors connected to their lighting circuits.

Pumping.

In order to increase its off-peak load the company has arranged with the city of Ladysmith to operate the latter's pumping station. Pumpage records, as well as other vital statistics regarding both the electric and water plants, are not available for use in this investigation. It is estimated by officials of the utility, however, that about 125,000 gallons of water will be pumped daily or about 45,725,000 gallons for the year. This estimate appears somewhat higher than experience shows might be expected in cities the size of Ladysmith and with the present number of water consumers connected. To be conservative, however, and hence make the pumping costs high if anything, we have used the above figures in our computations.

A 60 H.P. motor connected to a multistage pump with a capacity (at 60 per cent efficiency) of about 360 gallons per minute will be used. It appears that an efficiency of not less than $1\frac{1}{2}$ kw. hrs. per 1,000 gallons pumped can be expected, so that approximately 68,000 kw. hrs. will be used in pumping 45,720,000 gallons of water. The fact that this pumping can be done almost entirely off peak should entitle it to as low a rate as is consistent with operating conditions. Taking into consideration the hours of operation and other factors, our computations indicate that a tentative rate of $2\frac{1}{2}$ per cent per kw. hr. will be equitable to both the waterworks and the electric utility. This rate does not, however, take into consideration the purchase of any additional equipment by the lighting company. The location and facilities of the latter with respect to breakdown service are, it is believed, nearly ample to provide for all emergencies which may arise in connection with the operation of the pumps. If the present portable steam equipment owned and in use by the waterworks can be kept available, no auxiliary oil engine will, it is believed, be necessary.

The ownership of such additional equipment required to facilitate the electric pumping, by the electric utility, would necessitate both a long-term contract, during which time it would be considered good business for the utility to amortize the value of

its investment, and an agreement with the electric company at any time the city wished to change or increase existing equipment. It would appear to the best advantage of the city to purchase the necessary additional equipment. This matter, it appears, should be left to the interested parties to decide.

The aim in an electrically driven pumping plant is to secure an installation that will give the highest practical efficiency and produce the greatest economy in operation, because every thousand gallons of water pumped represents some cost, and small differences in efficiency percentage produce large differences in pumping cost per thousand gallons. Pumping is a steady load, and can generally be so regulated as to give the electric utility a heavy demand at periods when the load would otherwise be light. A hydroelectric system depends so much on the full utilization of the water in order to secure economical operation, that a pumping load may be desirable and worth taking on even at a moderate rate. With electric pumping the cost of operation becomes directly proportional to the amount of work performed, and practically ceases the moment the motor is stopped.

After giving due weight to all the facts in the case, it is believed that a minimum monthly charge for pumping of \$100 is equitable for the first year of operation under the tentative rate suggested.

It is possible to arrange for the automatic starting and stopping of pumps in order to insure against the motor equipment "counting on" at the time of the peak.

The peak hours suggested by the lighting company during which no service can be rendered for city pumping are from 4 p. m. to 10 p. m. The peak on the electric station will vary in time from early afternoon in midwinter to late in the evening in midsummer. It appears to us that arrangements can be easily made to render service during all hours of the day, the period between 4 p. m. and 10 p. m. included, should it appear that the station peak will not occur simultaneously with the pumping load and be raised by it. Furthermore, as there will be very few times during a year in which it will be absolutely necessary in case of a fire to operate the pumps during the station peak, and in view of our knowledge regarding the present temporary steam-

pumping equipment, it seems to us that the latter might be retained as an auxiliary.

If the lighting company installed additional equipment, it should be entitled to at least $12\frac{1}{2}$ per cent on its investment to cover the necessary interest, depreciation, and tax charges. In case the parties cannot agree as to who shall assume the amount of additional investment, this point will be gone into later by the Commission.

Respondent has evinced its intention of installing meters upon those consumers who are still upon a flat-rate basis as rapidly as circumstances will permit. Under a system of flat rates the amount to be paid depends almost wholly upon the fixtures, and not upon the amount of current used; and while an estimate can generally be made of the amount of current a certain group of lamps will consume, this estimate cannot be determined as accurately as is considered necessary in determining equitable rates.

Minimum Bill.

The minimum charge covers certain items in the operating expense of the plants, which bear little or no relation to the current sold. Such expenses vary with the number of consumers, since they are incurred through the customer being connected with the plant, and specific expenses being incurred on his account. The expense of reading meters, maintaining meters, delivering bills, and carrying the customers' accounts, are expenses which fall in this category. When no minimum charge is made, the company incurs expenses for those consumers who pay little or nothing to the company, and when such costs are not borne by the consumers for whom they are incurred, they invariably are saddled upon other consumers, and are, therefore, in a sense discriminatory.

There is in effect at present a monthly minimum bill of \$1, and also a provision that 25 cents be added as meter rental, making a total minimum of \$1.25. Consumer records examined indicate that a large number of consumers are affected by these provisions.

In view of the facts and considerations found in our analysis, it does not seem an unreasonable conclusion that the meter rental

be abolished, it being of doubtful legality, and the minimum charged for incandescent commercial lighting be placed at \$1 per month.

Records.

It should be noted that practically no records exist of many of the vitally important statistics which are necessary in determining equitable rates. The division of the demand among the different classes of service rendered by the utility, as well as a record of kw. hrs. generated, are not available for use. Consumer statistics are not uniform and many important data are missing. Until more complete records are kept so as to furnish a more accurate basis of determining the cost of each class of service, any entirely correct readjustment of rates is impossible.

The determination of the effect of the proposed schedule upon sales and charges in revenue is extremely difficult in the absence of mere record information. From the necessity of making estimates, due to lack of definite information, as previously noted, it is by no means certain that the conclusions reached are in all respects accurate. Not only for our use, but as an aid to more efficient plant operation, it cannot be too strongly emphasized that immediate, reliable, adequate, and permanent records are invaluable, and steps should be taken at once to remedy such defects as exist.

If utilities persist in operating blindly with only a superficial knowledge of such facts as accurate cost data, the amount of service produced, proper consumer statistics, etc., when at practically no expense the proper data may be secured which will place them upon a sound basis, they have only themselves to blame for their inefficiency.

This Commission has often alluded to the fact that the absence of record information should not prevent some rate adjustment being carried out. In the instant case it has been found advisable, in order to permit nothing to stand in the way of those adjustments which it is believed are necessary, to allow certain modifications of the proposed rates to go into effect.

Adequacy of Service.

Complaint was made that the Ladysmith Lighting Company does not furnish efficient service at Ladysmith, Wisconsin. An

examination of some of the reports of the Commission's inspectors in regard to service conditions in Ladysmith would appear to substantiate these charges.

An inspection prior to the filing of this complaint indicated poor station regulation, small secondaries, and overloaded transformers. When order U-233 of the Commission was issued August 9, 1913, to all lighting utilities in the state, no request for modification or exemption was asked by the Ladysmith Company, but some effort was made toward improving the quality of service being furnished.

On December 11 to 17, 1914, a subsequent inspection was made, and it was found that the Ladysmith Lighting Company is violating a number of the standard rules of service required by order U-233, both with respect to meter testing and voltage regulation.

It was noted that in certain instances motors thrown on the line caused considerable variations at different times. Under the present method of operation there is no water-wheel governor or voltage regulator in use, the voltage being controlled by hand regulation. The operator must be constantly in attendance at the hand wheel, which is located near the switch board, in order to keep the voltage from widely fluctuating. From the hand wheel, chains of between 40 to 50 ft. in length, lead to the gate of the wheel. Such equipment, it is obvious, cannot be very sensitive, as the chains have two or three right-angled turns with a certain amount of slack.

On January 8, 1915, the company's attention was called to the following rules as outlined in the order U-233, which the company was violating:

Rule 16. *Installation tests.* Meters are not tested in place of service within 30 days after installation.

Rule 17. *Periodic tests.* 132 meters due for routine test.

Rule 18. *Meter test records.* Original meter records do not show the kind of test or meter reading. There is no place for statement of creepage.

Rule 25. *Voltage variations.* All but one of five voltage records taken show a variation in excess of 3% from the standard line voltage, reported to be due to shortage of water.

Rule 26. *Voltage surveys.* It is understood that the company has a portable graphic recording volt meter but that no records are taken either at the plant or at various points on the system as required.

Records of such tests as have been made in the past have been poor. The Commission received no reply to its letter of Janu-

ary 8, 1915, regarding the above violations, and hence has no information regarding the utility's attitude regarding the points complained of. The reports upon the service rendered by the respondent and the condition of its plant and business indicate that there is plenty of room for improvement. Although this matter had been called to the attention of officials at the time previous inspections were made, it appears now that very little attempt was made to improve the situation. It is believed that a more careful study of the situation by the company will enable them to materially improve the service along the lines noted herein.

Consumers cannot be required to endure poor service any longer than is absolutely necessary to complete the work of reconstruction, repair and testing required to render the plant efficient. Sufficient time will be granted within which such work may be done if prosecuted with reasonable diligence. It is, however, imperative that there be no further delay in the matter, and no postponement of the time of taking effect of the part of the order herein relating to service will be granted.

It is therefore ordered that the respondent in this case, the Ladysmith Lighting Company, discontinue its present schedule of rates for electric service, and place in effect as a substitute therefor the following rate schedule deemed just and reasonable, as provided under chap. 499, § 1797m-46, Laws of 1907:

Commercial Lighting.

Schedule of rates for all lighting service furnished residences and business, and passing through the same meter, and measured by a meter or meters owned and installed by the company. This lighting service will include electric energy furnished for appliances other than lighting equipment, when the aggregate rated capacity of such appliances does not exceed 2 kw.

Primary Rate: 10¢ net or 11¢ gross per kw. hr. for all or part of the 40 hours' use per month per kilowatt of active load.

Secondary Rate: 8½¢ net or 9½¢ gross per kw. hr. for all or part of the next 60 hrs. use per month per kilowatt of active load.

Excess Rate: 6¢ net or 7¢ gross per kw. hr. for all current used in excess of 100 hrs. use per month per kilowatt of active load.

Active load shall in each case be a fixed percentage of the total connected load installed upon the consumer's premises. Incidental power appliances, such as flatirons, toasters, fans, etc., to

the amount of 1,000 watts rating shall not be considered in determining the active load.

In class A, which shall include residences, dwellings, flats, and private rooming houses, where the total connected load is equal to or less than 500 watts, nominal rated capacity, 60 per cent of such total connected load shall be deemed active; where the installation exceeds 500 watts nominal rated capacity, 33 $\frac{1}{3}$ per cent of such part of the total connected lighting load over and above 500 watts shall be deemed active.

In class B, which shall include all stores, offices, business and professional places, public halls, passenger depots, and theaters, etc., when the total connected load is equal to or less than 2 $\frac{1}{2}$ kilowatts nominal rated capacity, 70 per cent of such total connected load shall be deemed active. When the installation exceeds 2 $\frac{1}{2}$ kilowatts nominal rated capacity, 55 per cent of such part of the total connected load over and above 2.5 kilowatts shall be deemed active.

In class C, which shall include county and city buildings, schools, factories, industrial establishments, shops, stables, garages, and warehouses, 55 per cent of the total connected load shall be deemed active.

The minimum monthly charge for lighting service shall be \$1 for each installation.

All consumers with at least 100 watts connected shall be metered. Meter rental shall be discontinued.

Flat Rates.

All consumers should be supplied through meters. Until complete metering is effected the following flat rates will apply:

All lamps figured on the basis of 60 watts.

Residence:

1 lamp (60 watts) 50¢ per month.

2 lamps (120 ") 75¢ " "

5 lamps (300 ") \$1.15 per month.

Each additional 60 watts 20¢ per month.

Business enterprises:

20¢ per 60 watt unit.

Power Rate.

This service will include electric energy utilized for motive and miscellaneous lighting service. Stereopticons, moving-pic-

ture machine, photographer's arcs, and rectifiers shall be billed at the power rate when separately metered from the lighting.

Service charge:

50¢ net per active horse power per month.

Output charge:

4¢ net or 5¢ gross per kilowatt hour.

Active horse power shall consist of a fixed percentage of the nominal rated capacity of the motor as indicated on the manufacturer's name plate.

The following percentage of such capacity shall be deemed active:

The first 10 h.p. installed	90 per cent
Next 20 " "	70 " "
" 30 " "	50 " "
All over 60 " "	40 " "

Minimum monthly bill shall be \$1.25 for small motors. For large motors the capacity charge per h. p. shall constitute a minimum.

Street Lighting.

Present rates unchanged.

Discount.

The utility shall bill all metered consumers at the gross rate, and the difference between the gross and the net rates above specified, or 1 cent per kw. hr., shall constitute a discount for prompt payment within ten days of date of bill. All flat-rate consumers, until same are placed upon a metered basis, shall be assessed a 10 per cent penalty for nonpayment of bills within ten days following date of bill.

A canvass shall be made of the connected load of every consumer now connected and of each new consumer upon the installation of each meter; and all bills rendered by the company to the consumer shall state plainly the connected load of each consumer and the percentage which is considered active in computing the rate.

Service.

It is further ordered, that the respondent, the Ladysmith Lighting Company, make such additions, tests, etc., as will render it able to supply the city of Ladysmith and its inhabitants with reasonably adequate service, and observe and comply with the adequate and serviceable standards ascertained and fixed by the Commission in the rules established by the Commission by its order made and entered August 9, 1913, a copy of which rules is hereto annexed and made a part hereof.

Ninety days is deemed a reasonable time within which to comply with this order.

Railroad Commission of Wisconsin, by Halford Erickson, Carl D. Jackson, Walter Alexander, Commissioners.

CALIFORNIA RAILROAD COMMISSION.

IN RE ESCONDIDO UTILITIES COMPANY.

[Application No. 1355; Decision No. 2134.]

Security issues — Promissory note — Consent of Commission.

A two-year promissory note of a public service corporation, issued without the consent of the Commission, is void under the public utilities act.

Commissions — Powers — Violation of trust.

The Commission has no power to determine whether the vice president and manager of a public service company, in obtaining an option to purchase a promissory note of the company, has violated a trust.

Commissions — Powers — Validation of illegal note.

The Commission is without power to validate an illegal promissory note of a public service corporation.

Security issues — Promissory note in lieu of illegal note — Amount of new note — Effect of discount.

The fact that the holder of a public service corporation's promissory note issued without the required consent of the Commission, but for a proper indebtedness, has offered to discount it, does not justify the Commission in fixing the amount of a new note authorized to be issued in lieu thereof, at the sum at which the old note was offered for discount, instead of at the face value of the original note.

Security issues — Illegal promissory note — New note in lieu thereof.

Permission was given a public utilities company to issue an 8 per cent promissory note for \$16,000, payable two years after date in lieu of a note of the same amount issued without the required consent of the Commission.

[February 5, 1915.]

APPLICATION for an order determining the validity of a promissory note of \$16,000 and to determine the validity of a pledge of certain bonds as security for the payment thereof; order granted declaring bond issue legal and promissory note illegal, and authorizing issuance of a new note in lieu thereof.

Gordon, Commissioner: This is an application of Escondido Utilities Company, for an order determining the validity of a certain note for \$16,000 given to W. S. Shepardson, and of the pledge of bonds to the face value of \$32,000, said bonds having been pledged to secure the payment of the note in question. The note is dated March 1, 1913, and matures March 1, 1915.

In June, 1914, W. S. Shepardson agreed to sell applicant's note for \$16,000 held by him, to Charles C. Glass, a former director and manager of the Escondido Utilities Company, for the sum of \$12,000. On November 2, 1914, petitioner filed an amendment to its application, requesting that if the Commission should authorize a renewal of said note or the making of a new note in lieu thereof, such renewal or new note should be made for the sum of \$12,000, and no more.

Mr. Charles C. Glass and the Escondido Savings Bank, trustee, filed an intervention asking that the applicant be authorized to issue a note in the sum of \$16,000 to Mr. Shepardson.

I have made an exhaustive analysis of the application, the testimony offered at the hearing, the documentary evidence, and briefs submitted by the contestants.

Escondido Utilities Company was incorporated November 22, 1909, by Seth Hartley, Lottie Hartley, and Charles C. Glass, with an authorized capital stock of \$100,000 divided into 1,000 shares of the par value of \$100 each. All of the stock, except two shares, was issued to Seth Hartley in payment for money alleged to have been expended by him for the construction of applicant's gas and electric plants. Mr. Hartley retained control of the company until the latter part of 1910. At the present time, though applicant has ninety stockholders, the majority of the stock is owned and held by Messrs. W. A. Sickler, W. H. Baldridge, E. B. Buell, and H. T. Lyon.

Applicant is engaged in supplying Escondido, San Diego county, and territory adjacent thereto with electrical current and artificial gas. It owns an electrical steam generating plant, having a capacity of 150 kilowatts and a gas generating plant having a capacity of 100,000 cubic feet per twenty-four hours.

The cost of the electric plant is reported by the applicant at \$38,610.63 and the cost of the gas plant at \$22,599.03.

The evidence shows that applicant has approximately 200 gas

and 200 electric consumers. The rates on file with this Commission show charges as follows:

Electric Lighting Rates.

Minimum meter bill per month		\$1.50
First 100 kilowatt hours or less	10 cents per kilowatt hour	
Second 100 kilowatt hours or less	8 cents per kilowatt hour	
Third 100 kilowatt hours or less	7 cents per kilowatt hour	
Fourth 100 kilowatt hours or less	6 cents per kilowatt hour	
All in excess	5 cents per kilowatt hour	

Electric Power Rates.

Minimum bill \$1 per month per horse power connected.
Rates, 50 per cent discount on lighting rates.

Gas Rates.

50 cents top rate per meter installed (per month).		
First 10,000 cubic feet	\$1.00 per 1,000	
Above 10,000 cubic feet	80 per 1,000	

Applicant has submitted a financial statement for the thirteen months ending December 31, 1914. The statement shows earnings and expenses as follows:

Revenue.

Municipal lighting	\$1,738.75
Gas revenue (metered)	6,343.89
Gas revenue (prepaid)	170.75
Electric revenue (metered)	5,681.33
Electric revenue (flat)	2,620.88
Total	\$16,555.60

Operating Expenses and Interest.

Interest	\$2,359.16
Insurance	137.85
Supplies, oil	1.73
Supplies, electric fuel	3,868.80
Supplies, electric	340.98
Supplies, gas	149.28
Supplies, gas fuel	2,603.59
Labor, gas	1,372.84
Labor, electric	1,825.50
Freight and drayage	40.15
Salaries of general officers	495.00
General office and incidental expenses	577.02
Setting and removing meters	6.25
Setting and removing meters, gas	19.00
Repairs to meters, gas	2.35
Repairs to municipal system	251.71
Repairs to generating plant, gas	95.39
Repairs to distributing system, electric	51.65
Repairs to distributing system, gas	71.27
Meter reading, electric	55.50
Meter reading, gas	55.35
Repairs to furnaces and boilers	791.00
Repairs to furnaces and boilers, gas	229.30
New business, electric	70.10
New business, gas	70.10
Injuries and damages	46.25
Salaries of office clerk	880.00
Electric services	47.48

Steam generating labor	151.50
Law expense	15.00
Taxes, electric	424.80
Taxes, gas	341.69
Total	\$17,447.59
Loss for 13 months	891.99

Applicant reports assets and liabilities as of December 31, 1914, as follows:

Assets.	
Fixed capital:	
Electric plant	\$38,610.63
Gas plant	22,599.03
Fixed capital installed since December 31, 1912	383.28
Real estate	4,606.50
Furniture and fixtures	330.21
Total	\$66,529.65
Treasury securities and investments:	
Stock	\$7,800.00
Bonds	45,000.00
Stock in Escondido Mutual Water Company ...	112.00
Total	52,912.00
Current assets	
Cash	\$56.23
Accounts receivable	1,719.60
Unamortized discount on stock	56,570.04
Deficit	985.98
Total assets	\$178,773.50
Liabilities.	
Capital stock	\$100,000.00
Assessment on stock	3,698.00
Bonds	50,000.00
Current liabilities:	
Notes payable	\$21,000.00
Accounts payable	2,953.72
Deposits	877.00
Miscellaneous	244.78
Total	25,075.50
Total liabilities	\$178,773.50

While applicant reports bonds to the face value of \$45,000 in its treasury, the evidence submitted shows that these bonds are pledged to secure the payment of notes. Though all of applicant's stock was originally issued, \$7,800 has reverted to the treasury because of the failure of the owners of said stock to pay the assessments levied upon it. During the history of the utility, it has been necessary to levy three assessments on the stockholders. The first of these amounted to \$3 per share, the second to \$5 per share, and the third to \$4 per share.

Under a deed of trust dated December 28, 1909, Escondido Utilities Company is authorized to issue bonds to the face value of \$50,000. These bonds are dated January 1, 1910, and mature serially. Three bonds mature January 1, 1915, and three annually thereafter until all are paid. The bonds are in the denomination of \$1,000 and bear 5 per cent interest.

The bonds were issued to Mr. Seth Hartley for advancements of money by him to the company. Thereafter he used the bonds as collateral to secure his indebtedness.

The company, to determine whether its bonds had been illegally issued, filed, in 1911, a suit in the superior court of the county of San Diego, against Seth Hartley in order to recover its bonds. The case was heard by Judge W. A. Sloane, who rendered a judgment in favor of Mr. Hartley. In substance, the court held that the plaintiff had failed to prove any fraud or mistake in connection with the issuance of the bonds; that the bona fide indebtedness of the plaintiff to the defendant amounted to \$26,283.81; that the plaintiff, the Escondido Utilities Company, was entitled to recover the possession of the bonds only upon the payment of the sum of \$26,283.87, with interest at 6 per cent per annum; from the 15th day of July, 1910, less \$1,380, the amount received by the defendant as interest on the bonds from October 31, 1910, to May 1, 1911; and that the defendant, Seth Hartley, had the right to hold and dispose of the bonds securing the indebtedness of \$26,283.81.

Thereafter, Seth Hartley agreed to discount the judgment by the amount of \$2,783.81. He further agreed to accept in satisfaction of said judgment, a note for the face value of \$16,000 and \$6,500 cash. The difference of \$1,000 is accounted for by the sale of one bond by Mr. Hartley.

The court having found that the bonds were legally issued prior to March 23, 1912, and the evidence in this proceeding showing that they never thereafter became the property of the company, and that they were the private property of Seth Hartley at the time they were pledged to secure the \$16,000 note in question, I am of the opinion that this Commission should find that the \$32,000 of bonds pledged to secure the note of \$16,000 were legally issued.

The issuance of the note, for the payment of which the bonds

were pledged, presents an entirely different subject, the facts of which I shall now consider.

To pay the judgment rendered against it, applicant borrowed \$5,000 on a six months' note from the First National Bank of Escondido; \$1,500 on a six months' note from H. T. Lyon and Edgar B. Buell, and \$16,000 on a two-year note from W. S. Shepardson.

This application involves the legality of the note given to W. S. Shepardson, which was dated March 1, 1913. The company did not receive \$16,000 in cash from Mr. Shepardson. He, from time to time, had loaned money to Seth Hartley, and in settlement of claims against said Hartley agreed to take a note from the Escondido Utilities Company for the amount above indicated. The note was not issued to Seth Hartley and by him assigned to W. S. Shepardson, but was issued direct by Escondido Utilities Company to said Shepardson. The bonds pledged as security were, however, transferred by Seth Hartley, and not by the company, to W. S. Shepardson.

That the note in question issued on March 1, 1913, for a period of two years was issued in violation of the public utilities act, is so obvious that further comment on that subject is unnecessary.

By an agreement (see exhibit "A," amendment to application), Charles C. Glass secured an option from W. S. Shepardson to purchase the \$16,000 note given to him by the Escondido Utilities Company for the sum of \$12,000. Mr. A. H. Wohlford, of the Escondido Savings Bank, testified that he had agreed to pay Mr. Charles C. Glass \$1,000 for his option.

Applicant contends that Charles C. Glass, for the reason that he was vice president and manager of the company at the time the note to W. S. Shepardson was given and an employee, serving in the capacity of operator of the plant at the time he made arrangements to purchase the note, occupied a fiduciary position towards the company and violated his trust.

Inasmuch as W. S. Shepardson has agreed to sell his claim against the company for the sum of \$12,000, applicant requests this Commission, in case it should find the note to have been issued in violation of the public utilities act, to authorize a new note to Mr. Shepardson for the face value of \$12,000, thereby depriving Charles C. Glass et al. of the profits which they intend

to make at the expense of the Escondido Utilities Company. As against this position, the interveners contend that if such an order be issued by the Commission, it in reality will reward rather than penalize the Escondido Utilities Company for violating the public utilities act.

The agreement between W. S. Shepardson and Charles C. Glass, under the terms of which Mr. Glass is to acquire the \$16,000 note of the Escondido Utilities Company for the sum of \$12,000 becomes inoperative after February 15, 1915, in case neither party shall have filed by that date a copy of an order of this Commission authorizing the issue of the bonds pledged as collateral for the \$16,000 note, and "ratifying the board of directors of the Escondido Utilities Company in hypothecating said bonds as collateral security."

The charge made by the applicant that Mr. Charles C. Glass, in obtaining an option on this note for \$12,000, has violated a trust, is not for this Commission to determine. That is a matter for the courts. It is, of course, within the province of this Commission to endeavor to do equity in all cases that come before it. In this particular instance, the Commission is called upon merely to exercise an authority, with which it is vested under the public utilities act, to authorize the issue of a promissory note for a period in excess of one year. This applicant has, in violation of the public utilities act, issued its note for \$16,000 to Mr. Shepardson. This Commission cannot validate an illegal note. It may be assumed, and in fact it is admitted by the applicant, that the note of \$16,000 represents a proper subsisting obligation due Mr. Shepardson. It does not lie with this body to say that because Mr. Shepardson may have been willing to discount his note, this applicant should be relieved of the amount of its undisputed indebtedness represented by that discount. Such an authorization, if given, would in reality avail nothing, because the legal debt would remain the same. In other words, this Commission cannot change the amount of the indebtedness.

It was made clear at the hearing in this matter that the Commission did not regard itself as the proper body before which a charge of breach of trust on the part of Mr. Glass should be tried. It did not seek to develop all of the facts surrounding the conduct of Mr. Glass in this transaction. It is my view that

this body should not in this matter assume to adjudicate matters not properly within its jurisdiction. I shall, therefore, recommend such disposition of this case as shall leave all parties free to contract and to carry into the appropriate tribunals, if they so desire, such matters as they cannot otherwise determine.

I believe that the violation of the public utilities act by the applicant herein was rather through ignorance of the statute at the time, than through a desire to evade its provisions. In view of all these facts, I recommend that the applicant be granted authority to issue a new note in lieu of the invalid note previously issued to Mr. Shepardson; and that this new note be of a face value not to exceed the sum of \$16,000.

It must be distinctly understood that the Commission is not directing the applicant to issue a note of the face value of \$16,000, but that the order herein is simply permissive in so far as this Commission is concerned. If there are reasons why a note should not be issued in this amount, or if the matter can be settled by the issue of a note in a lesser amount, these matters will be determined in the proper forum and by the proper parties.

Accordingly, I submit the following form of order:

ORDER.

Escondido Utilities Company having applied to this Commission for an order to determine the validity of a promissory note in the sum of \$16,000, payable to the order of W. S. Shepardson, and to determine the validity of the issue and pledge of bonds by said company to secure the payment of said note, and a hearing having been held and this Commission being acquainted with all the facts,

It is hereby found as a fact that said note in the sum of \$16,000, issued by Escondido Utilities Company to W. S. Shepardson, dated March 1, 1913, said note being for a period of two years, was issued in violation of the provisions of the public utilities act;

It is hereby further found as a fact that \$32,000 of bonds pledged as collateral security for said note of Escondido Utilities Company for \$16,000, payable to W. S. Shepardson, were not issued in violation of the provisions of the public utilities act.

A hearing having been held on the application herein, and it appearing that the purposes for which the note in the sum of \$16,000, payable to W. S. Shepardson, heretofore referred to, was issued, were not, in whole or in part, reasonably chargeable to operating expenses or to income,

It is hereby ordered that Escondido Utilities Company be given authority, and it is hereby given authority, to issue a promissory note to W. S. Shepardson, said note to be of the face value in a sum not to exceed \$16,000, to be payable not more than two years after date, and to bear a rate of interest not to exceed 8 per cent per annum.

The authority herein given to issue said note is given upon the following conditions, and not otherwise:

1. The note herein authorized to be issued shall be issued in substitution for a note in the sum of \$16,000 issued by Escondido Utilities Company to W. S. Shepardson and dated March 1, 1913.

2. Upon the issue of the note herein authorized to be issued, the note previously issued to W. S. Shepardson in the sum of \$16,000, dated March 1, 1913, shall be canceled.

3. The authority herein granted is conditioned upon the payment by applicant of the fee prescribed in the public utilities act.

4. The authority herein granted shall apply to such note or notes as shall have been issued on or before March 1, 1915.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

CALIFORNIA RAILROAD COMMISSION.

CARNEGIE BRICK & POTTERY COMPANY

v.

WESTERN PACIFIC RAILWAY COMPANY.

[Case No. 382; Decision No. 2152.]

Grog — Definition.

Grog is a name applied to refractory materials such as pulverized

brick, pottery, or fire clay, and, like clay, used in the manufacture of fire brick.

Rates — Reasonableness — Comparison — Different railroads — Same railroad.

A comparison of the rates of one railroad with those of another railroad, or with other rates of the same railroad, for transporting identical commodities for similar or greater distances, is not controlling evidence that the rates complained of are unreasonable, unjust, or excessive, where it appears that they apply to a service rendered between points on a branch line operated under peculiar conditions.

Rates — Adjustment — Peculiar conditions.

Railroad rates for service rendered between points on a branch line, the operation of which is surrounded by peculiar conditions, should be adjusted with regard to those conditions.

Apportionment — Revenues — Mileage basis — Branch lines.

In an apportionment of revenues of a railroad system on a mileage basis for the purpose of determining whether a branch line is operated at a loss, consideration should be given the usual contention that rates involving branch-line service are made relatively higher per mile than main-line rates to compensate for the relatively higher cost of operation, and compensated mileage should be allowed the branch line instead of straight mileage.

Evidence — Operating loss — Branch line — Apportionment.

A branch line of a railroad is not shown to have been operated at a loss where it appears from the evidence that the revenue has been apportioned on a straight mileage basis, instead of on a compensated mileage basis, and that certain general operating expenses have not been apportioned.

Rates — Classification — Value basis.

A railroad company should maintain lower rates between the same points on clay than it maintains on fire and face brick, these being manufactured articles of somewhat greater value than clay.

Commissions — Powers — Monopoly and competition — Rates — Competitive markets.

The Commission is not empowered to equalize competitive conditions by adjusting transportation rates, in the absence of a showing that the conditions surrounding the service in each case are similar.

Rates — Reasonableness — Test.

Railroad rates for the transportation of clay in carload quantities between certain points were found to be unjust, unreasonable, and excessive, where it appeared that such rates were as high as those for the transportation between the same points of fire and face brick, manufactured articles of greater value than clay.

Reparation — Damages — Not made to increase profits.

An award of reparation will not be granted to increase the profits of a claimant to the extent that the rates charged were found to be excessive, where it appears that the goods transported were in no case sold without profit, such difference in profits not constituting damage or injury to claimant due to the imposition of excessive rate.

Reparation — Damages.

An award of reparation will not be granted unless, in addition to proving that the rate at the time it was charged was excessive, it is also shown by the claimant for reparation that some damage or injury was sustained by it, by reason of the imposition of such excessive rate.

Rates — Reasonableness — Reduction.

A railroad company was ordered to publish and file and to put into effect as just and reasonable a rate of 65 cents per ton of 2,000 lbs. on clay in carload quantities of 60,000 lbs. or more, from Tesla, Walden, and Carnegie to Stockton, California.

[February 12, 1915.]

COMPLAINT as to transportation rates on grog and claim for reparation; rate reduced; complaint dismissed as to other matters.

Gordon, Commissioner: The complainant in this proceeding is a corporation, and formerly engaged in the manufacture of clay products at factories owned and operated by it at Walden and Carnegie on the so-called Tesla branch of the Western Pacific Railway. These factories are not now and have not been in operation for some time. The complainant also owns and operates extensive clay "beds" in the vicinity of its factories, from which it made a number of carload shipments of clay to Stockton for manufacture into fire brick and face brick during the year 1912, after it had discontinued operating its factories. During the same period the complainant also made a number of shipments of grog from Walden and Carnegie to Stockton for a similar purpose. For the transportation of this traffic the defendant charged a rate of \$1 per ton of 2,000 pounds from Tesla and a rate of 75 cents per ton of 2,000 pounds from Walden and Carnegie to Stockton. Rates are not specifically published on grog from Walden and Carnegie to Stockton in the tariffs of the defendant on file with this Commission, but it appears that the rates applying on clay between those points have been applied on the shipments of grog that have moved,—“grog” being a name applied to refractory materials such as pulverized brick, pottery, or fire clay, and, like clay, is used in the manufacture of fire brick. The complainant alleges that the rates charged and maintained by the defendant for the transportation of clay and grog from Tesla, Walden, and Carnegie to Stockton are

unjust, unreasonable, and excessive to the extent that they exceed a rate of 50 per cent a ton, and it asks that the Commission so find and reward reparation on past shipments in the sum of \$523.59.

The defendant admits, subject to verification, that the shipments were made and charges thereon collected as alleged in the complaint, but denies that such charges were or are unreasonable, excessive, or unjust.

The complainant bases its complaint, in part, on the fact that the defendant has established and concurrently maintains from Walden and Carnegie to Stockton, rates on clay as high as it maintains on fire and face brick, although the latter are manufactured articles of greater value than the clay, and also on the ground that the defendant has established and maintains lower rates on sand, gravel, and crushed rock, in carload quantities, from Tesla, Walden, and Carnegie to Stockton, than it maintains on clay and grog from and to the same points. For the purpose of comparison the rates on the several commodities and the distance between the points involved are set out in the following table:

To Stockton from—	Distance in Miles	Rates on Carload Quantities Per Ton of 2,000 Pounds, in Cents		
		Crushed Rock, Sand and Gravel	Clay	Fire and Face Brick
Carnegie	30.8	25	75	75
Walden	33.3	30	75	75
Tesla	35.1	30	100 ¹	155

¹ Combination of local rates to and from Carnegie.

The complainant further contends that the rates maintained and charged by the defendant on clay and grog, in carload quantities, from Tesla, Walden, and Carnegie to Stockton are in excess of the rates charged by the Southern Pacific Company for the transportation of clay, in carload quantities, from Ione, Valley Springs, and Lincoln to Stockton, and as a consequence that it is unable to market its clay in Stockton in competition with the clay shipped to Stockton from those points. The complainant also contends that the rates in question are shown to be unreasonable and excessive when compared with the rates maintained by the Southern Pacific Company on clay, in carload quan-

tities, from Lone, Valley Springs, and Lincoln to San Francisco, for materially greater distances, and with the rates maintained by the defendant for the transportation of clay products between points on its own line for similar and greater distances. These comparisons are set out in detail in an exhibit submitted by the complainant at the hearing and marked "Complainant's Exhibit No. 1."

The service from Tesla to Stockton is, in part, over a branch line of railway which produces but a small amount of traffic since the factories at Carnegie and Walden have discontinued operation, and there is practically no inbound tonnage in earload quantities to points located on that branch, and but an occasional less earload shipment moves to points thereon. Because of these conditions but an irregular train service is maintained thereover, and it appears that, to transport earload shipments of clay or sand from Tesla or Walden or Carnegie to Stockton under the present conditions, it is necessary to operate a special train from Stockton to haul in the empty cars and haul back the loaded cars, never exceeding one or two from the points on the branch. This service is performed by special trains from Stockton, as the traffic from the branch line is not sufficient to warrant the operation of a regular train service, as heretofore stated, and because it is impracticable on account of the light construction of the greater part of this branch, for the heavy engines used in the main line local freight trains to perform this service. The gravel shipped from points on this branch to Stockton is handled differently. It is loaded at a point on the branch but a short distance from the junction point with the main line, and the construction of this part of the branch is such as to permit of the operation thereover of the heavy engines used in the main line local freight trains which make side trips from Carbona, the junction point, to handle this particular traffic. It also appears from the record that there is no immediate prospect of the factories at Walden and Carnegie resuming operation, or sufficient other traffic being offered, to justify the maintenance of a regular service over this branch, and also that it is probable that defendant will be compelled to continue to handle such traffic as offers at Tesla, Walden, and Carnegie by special trains. The special service, however, is largely at the carrier's convenience, which, to some extent, com-

pensates for its character. Nevertheless, the peculiar conditions surrounding the operation of this branch are sufficient, in my opinion, to distinguish the service to and from points thereon from the service rendered on the main or branch lines of the Southern Pacific Company or of the defendant over which the rates offered in comparison apply, and in my opinion rates to or from points on this branch should be adjusted with regard to this singular condition.

However, I am not satisfied from the evidence that this branch line is operated at a loss, as the defendant contends. In the exhibits submitted by it at the hearing to support this contention, the revenue received from traffic between points on the branch line and other points on the defendant's line is apportioned between the respective portions of its line on a mileage basis, under which theory it appears that the defendant has disregarded the usual contention that rates involving a branch-line service are made relatively higher per mile than main-line rates to compensate for the relatively higher cost of operation. If this be correct in this case, and defendant's rates are so adjusted, it would appear to follow that, in dividing the earnings between the branch and main line on a mileage basis, consideration should be given to this feature, and compensated mileage allowed the branch line instead of straight mileage, as has been done in this case. What the results would be were such a basis used it is impossible to determine from the evidence, as sufficient data was not furnished to reconstruct the defendant's exhibits accordingly. Again, while it was stated that the operating expenses shown in defendant's exhibits were the actual expenses incurred in operating the branch line only, it is not clear how the actual branch-line expenses for maintenance of equipment, wages of train, and engine crews and fuel and supplies for locomotives, as shown in the exhibit, can be ascertained except on a basis of apportionment when such equipment and crews were engaged in both branch and main line service.

As appears from the table of rates hereinbefore set out, the rates on sand and gravel are materially lower than the rates on clay between Tesla, Walden, and Carnegie and Stockton, and while the complainant does not contend that the rates on clay

should be on the same basis as the rates on sand and gravel, nor does the evidence convince me that this should be the case, I do not believe that such a difference as is maintained is justified by the surrounding transportation conditions. I am also of the opinion that the defendant should maintain lower rates on clay from Carnegie and Walden to Stockton than it maintains on fire and face brick, manufactured articles of somewhat greater value than the clay. The fact that the complainant is at a disadvantage in marketing the clay shipped by it from points on the Tesla branch to Stockton, in competition with clay shipped from pits located on the Southern Pacific Company's line to the same market, is a condition which this Commission is not empowered to equalize by adjusting transportation rates, in the absence of a showing that the conditions surrounding the service in each case are similar.

After a full consideration of all of the evidence I find that the rates charged and maintained by the defendant for the transportation of clay, in carload quantities, from Tesla, Walden, and Carnegie to Stockton, are unjust, unreasonable, and excessive, and that a just and reasonable rate for the transportation of clay in carload quantities of 60,000 pounds or more from Tesla, Walden, and Carnegie to Stockton is 65 cents per ton of 2,000 pounds.

The shipments of clay and grog upon which the complainant bases its claim for reparation were forwarded to Stockton for manufacture into fire and face brick to fill certain orders which had been accepted by the complainant before its plants at Carnegie and Walden had closed down, and the price of the brick was based upon its manufacture at those points. The complainant admits that in no case were the bricks sold without profit, but it contends that its profit should be increased to the extent that the present rates on clay from Walden and Carnegie to Stockton are found to be excessive. In my opinion such a showing is not sufficient to justify an award of reparation. In addition to proving that the rate at the time it was charged was excessive, it should be shown by the claimant for reparation that some damage or injury was sustained by it by reason of the imposition of such excessive rate. In other words, claimant for reparation must not merely show a wrong of the carrier, but that that wrong has in

fact operated to its injury, as was held by the Supreme Court of the United States in *Parsons v. Chicago & N. W. R. Co.* 167 U. S. 447, 42 L. ed. 231, 17 Sup. Ct. Rep. 887. I am of the opinion, therefore, that reparation should be denied.

I submit the following form of order:

ORDER.

The complaint and answer having been filed in the above entitled proceeding, and a public hearing having been held thereon, and a full investigation of the matters and things involved having been had, and the Commission having made the findings of fact which are contained in the opinion which precedes this order and on which this order is based,

It is hereby ordered that the Western Pacific Railway Company publish and file in a tariff with this Commission, to become effective twenty days from the date of this order, a rate of 65 cents per ton of 2,000 pounds on clay in carload quantities of 60,000 pounds or more from Tesla, Walden, and Carnegie to Stockton, California, which rate is found to be just and reasonable, and is hereby established as a just and reasonable rate to be charged.

It is further ordered that as to the other matters involved the complaint be and it is hereby dismissed.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the state of California.

ILLINOIS PUBLIC UTILITIES COMMISSION.

WESTERN UNITED GAS & ELECTRIC COMPANY.

[Case No. 3142.]

Gas rates — Prepayment meters — Additional charge.

A gas company is entitled, on account of the greater cost of installation and maintenance, to make a reasonable additional charge for gas sold through prepayment meters, put in only at the request of its customers, over the rate for gas sold through standard credit meters.

Gas rates — Prepayment meters — Amount of additional charge.

A gas company was authorized to charge \$1 per thousand cubic feet for gas sold through prepayment meters, where the rate for gas measured through standard credit meters was 90 cents per thousand feet.

Gas rates — Prepayment meters — Special charge to customers in arrears.

A gas company was ordered to discontinue its practice of setting prepayment meters at special prices, higher than the standard rate, where such special charges and classifications, rules and regulations relating thereto, had not been filed with the Commission and published in accordance with the public utilities commission law, although customers had agreed thereto and were few in number.

[March 4, 1915.]

APPLICATION for permission to set prepayment meters at a higher rate than the rate for gas sold through standard credit meters; granted.

Commissioner Shaw: On November 30, 1914, petition was received from the Western United Gas & Electric Company, an Illinois corporation engaged in the manufacture, sale, and distribution of gas in the cities of Aurora, Joliet, LaGrange, and approximately fifty other municipalities in the state of Illinois, and engaged in business in said territory, as appears from the schedules on file with the Commission. The petition further sets forth that in divers of the municipalities served by petitioner there has been in use for a long period of time what are known in the trade as "prepayment meters," and these have been hitherto set so as to charge \$1 per thousand cubic feet of gas measured therein. The rate charged for some time past for gas measured through ordinary meters has been 90 cents net per thousand cubic feet of gas consumed.

All prepayment meters in use are put in at the request of the consumers, and in no instance does the petitioner require a consumer to use this style of meter.

The petition further states that the use of such prepayment meters is necessary in many cases, because consumers do not pay bills, and said consumers rather than have service discontinued will request that prepayment meters be put in place, instead of the credit meters. It is further represented by the petitioner that to serve through prepayment meters at the same rate as

charged to persons using credit or ordinary meters would be unfair and an injustice to such persons as use credit or ordinary meters; this for the reason that prepayment meters require more frequent inspection, are subject to more frequent repairs at greater expense, and such prepayment meters cost approximately 48 per cent more than the ordinary or credit meters. In this way the petitioner is put to greater expense in the repairing of prepayment meters than is the case where ordinary meters are in use. In addition to the foregoing objectionable facts, there are others, such as extra cost in the reading of such meters and the collection of money therefrom; and that one of the most serious objections to the prepayment meter is that the petitioner suffers loss, and is exposed to loss through theft and other causes when prepayment meters are used instead of the ordinary credit meters.

The petition draws attention to the fact that the Commission has in its rules establishing standards of service a certain rule 11, class (d), which is in words as follows: "Prepayment meters: No utilities shall use prepayment meters, geared or set so as to cause a rate or amount higher than would be paid if a standard meter was in use, unless the consent of the Commission is first obtained in writing."

The petitioner further represents that it would prefer not to use prepayment meters in its business, but that by discontinuing such use it would necessarily deprive certain of its customers of the use of gas.

The petitioner further states that in addition to such prepayment meters that are set at \$1 per 1000 cubic feet consumed, it has a small number set at various special higher prices by special arrangements with its customers using same, such customers being in arrears in the payment of past bills, and having agreed that the extra amount paid shall be credited upon the arrearages, gas being charged for at the rate of \$1 per 1,000 cubic feet of gas.

The petitioner further represents that it has at no time had any complaint from any of its customers using such prepayment meters and paying for gas therefrom at the rate of \$1 per 1,000 cubic feet, but that in fact so far as it knows, all of its customers using such meters are entirely content to pay on such basis, because of the advantages they afford to them.

The petitioner further represents that it has in use prepayment meters of different makes, certain of which it is impossible to set, so that gas may be sold on the basis of 90 cents per 1,000 cubic feet, and that to change the same would entail large expense upon petitioner.

The petitioner further represents that the cost of purchase, installation, maintenance, and operation of prepayment meters is much higher than similar costs with respect to ordinary meters, and that in consequence thereof, in its opinion, the reasonable price which it should be permitted to charge for gas sold through such meters should be at the rate of \$1 per 1,000 cubic feet; and that in the opinion of the petitioner, if it should be required to sell gas through prepayment meters at the same rate as through ordinary meters, customers of petitioner purchasing gas through ordinary meters would be discriminated against, and the additional expense to which petitioner is being put because of the use of such prepayment meters, would have to be borne by users of ordinary meters.

The petitioner further represents that it has a great number of prepayment meters in use, and that it has been impossible to change same to ordinary meters, in compliance with the rule of this Commission, up to the present time; that to change same would cause great and unnecessary expense to petitioner if the Commission should not look with favor upon this petition.

The petitioner therefore prays that this Commission make investigation of the facts hereinabove stated, and that it enter its order granting to the petitioner the right to set prepayment meters so that the price charged for gas shall be \$1 per 1,000 cubic feet, until the further order of this Commission, excepting in such communities as to this Commission it shall seem improper to make such order, and that the aforesaid rule be suspended with respect to its operation with regard to this company; and that during the pendency and filing the determination of this petition, the same rule be suspended with respect to its operation in regard to this company, temporarily, and that this Commission enter such further order in the premises as to it may seem proper.

At a preliminary hearing the motion of the petitioner for temporary suspension of the application of rule 11, class (d), as applied to the business of the petitioner, the Commission, being

sufficiently advised, issued an order on the 4th day of December, 1914, granting suspension of the rule until the further order of the Commission. The case was then set for further hearing at the office of the Commission in Chicago on January 26, 1915. It appeared from the evidence submitted that something over 30 per cent of the meters in the Joliet rate zone of the petitioner are of the prepayment type, this district being one where the sendout of gas is larger than in the other rate zones of the petitioner, although in the Elgin district there are nearly as many meters, in which the percentage of the prepayment type is about 30. The attorney reported it is not the desire of the petitioner to serve gas through prepayment meters, but in the city of Elgin, under an ordinance provision, they are compelled to serve gas through prepayment meters to such customers as desire this form of meter. It is the claim of the company that the service through prepayment meters is different service than through standard meters, and that it costs more, and evidence was submitted to show that it would be unfair to the users of standard meters to have them pay as much as people who use gas measured through prepayment meters. Details were requested by the Commission in respect to the greater cost of serving gas through prepayment meters, and there was read into the testimony a letter from the former general manager of the utility, which explains the whole situation very clearly, and for this reason is quoted in full as follows:

"It is possible that I may not be here when this case comes to a hearing; and I wish, therefore, to suggest a few of the reasons why I believe the Western United Gas & Electric Company should be allowed to charge more for gas through prepayment meters than through regular meters.

"1. A prepayment meter costs more money, the extra cost over the cost of the regular meter being about 60 per cent.

"2. A prepayment meter costs more to maintain, because of the extra mechanism; repairs on prepayment meters take longer than repairs on corresponding regular meters. Also repairs are often made necessary by the failure of the prepayment device itself.

"3. The cost of installation of prepayment meters is often very

much greater than that of regular meters, and will become still more of a burden with the increasing number of thefts from these meters. It has been held in several cases that the gas company is responsible for the money as soon as deposited in the meter, no matter where the meter is located. This makes it very necessary to locate these meters where the danger of theft is reduced to the minimum. Ordinarily the service pipe comes in the basement wall, and the ordinary meter is set at that point, and the house piping extended beyond belongs to and is paid for by the customer. Regular meters are often set in hall ways in apartment houses, from which point the house piping is paid for by the owner. Prepayment meters, on the contrary, must be mainly located in kitchens or other living rooms where they will be safe, and this means greater cost to the gas company in bringing the pipes to these points.

"4. The cost of reading these meters and collecting the money from them is greater than the same cost with the regular meters. At first glance this would seem a doubtful statement. However, it can be easily shown that it is correct. Regular meters are read in batches of 150 to 200 meters a day by any workman who may be available, often by schoolboys. It is not difficult to read meters, and by carefully routing the work it is very quickly done, the meters being grouped into districts. The prepayment meters, however, are scattered here and there throughout the city, and the distance from one prepayment meter to the next one is very much greater. Casual labor cannot be used because of the money to be handled, but only trusted men paid at a higher wage can be employed. These men must not only read the meter, but must check, and take the money, and place it in a separate sack provided for the contents of each meter, on which is made a record of the transaction, which must be later checked at the office. It is safe to say that 90 per cent of all the bills from regular meters, come into the office without costing the company 1 cent, and are paid over the counter without risk to the company. Of the remainder, only a very small percentage involve any considerable cost in collection.

"5. It is a mistake to think that prepayment money is received in advance, and therefore the most favorable collection the company makes. While the money for gas used must be paid

in advance by the customer, this money cannot be collected quarter by quarter as paid. As a rule, prepayment meters are read after the regular meters are read, and the money is then collected. By the time this money is received in the office, the money from the regular meters has already begun to come in, and the difference in the time of the receipt of the prepayment money from the average time of the receipt of the regular meter money will be very small. There is no gain to the gas company in interest from this source that amounts to anything. I have never heard a gas-company official consider that there was any advantage in this respect.

"6. Losses from theft of prepayment meters have been numerous in the past and are growing more numerous. These losses are from two causes,—that where the owner of the meter abuses the trust in him, and that where some outsider robs the meter as he would the money drawer of a shop or office. In the first case, it is sometimes possible to obtain restitution. In the second, the money is gone. Every case of this kind is exceedingly disagreeable, and the money expended in the settlement of such cases, plus the actual loss, is a very important element in the collection costs from prepayment meters, often bringing these costs far in excess of the total collection costs from regular meters.

"7. In thefts from an outside source, the money box is often broken off and the mechanism injured, involving heavy maintenance cost for the restoration of the same. Also a meter thus tampered with must be immediately removed and another meter set, and this involves the cost of at least \$1 for such setting and removal for such case.

"8. The argument that the customer should certainly not pay more for his gas, because he pays in advance, is not a sincere argument on the part of the customer. No customer is forced to have a prepayment meter. All customers have the same right to a regular meter. Where a prepayment meter is found, it is sure to be in use because either of a demand on the part of a customer for it, or because the customer has failed to keep up his credit with the company like other customers. If the customer demands it, it shows that the value of the service to him is his first consideration. He is not asking for it in order to give the company an advantage. If the customer does not keep up his credit

relations with the company like other customers, he is certainly not entitled to a preferred service for this condition.

"Yet the prepayment meter is a preferred service. It costs the company more money from the various causes enumerated above. In the minds of many customers, it gives the customer a distinct advantage. It puts the customer on a different credit relation with the company, allowing him to have gas on peculiar terms that suit him. To give such preferred and more expensive service at the same cost as the service through regular meters would in my opinion, constitute an actual discrimination."

"11. The average gas bill through prepayment meters will amount to about 2,000 cu. ft. per month; 10 cents on this is 20 cents, or \$2.40 per year. Considering the interest and depreciation on the extra cost of the installation, and considering the extra cost of maintenance and the extra reading and collection costs, and losses through theft, and this is only a reasonable extra charge for this particular service.

"12. In reading the above, I find that I have omitted another extra cost, — that at the office. Prepayment meters involve a special ledger with extra bookkeeping. Constant checking of these ledgers is necessary in order to determine that the meters are not being tampered with. As a rule the best clerks are selected for the work on the prepayment meter ledger.

"Very truly yours,

"Western United Gas & Electric Company.

"(Signed) H. L. Rice,

"General Manager."

Carrol Miller, being duly sworn and called as a witness, substantiated the statements quoted above, which he considered covered the case fully, and, in his opinion, he could only repeat what was said, and agree with all of the statements made.

It was established by the testimony that it is common practice to charge more for gas furnished through a prepayment meter than for gas sold by measurement through a standard ordinary or credit meter.

It is the opinion of the Commission, as expressed in other cases of this kind on orders before issued after hearing and investigation, that inasmuch as no consumer is forced to use a prepayment

meter and that said meters are put into use only after being expressly desired by the consumers, and in view of the further fact that it does cost more to install, to continue in use, and to operate the style of meter which is commonly known as prepayment type, that for these reasons those utilities who agree to the wish of the consumers that prepayment meters be installed where and when desired, said utilities are justly entitled to a reasonable additional rate for gas sold through a prepayment meter as compared with gas sold through a standard credit meter. In this particular case no increase has been asked over the rates now in effect, and the order written in the case is therefore in the nature of a confirmation of the rates that are now in effect and which have not been complained of to the Commission at any time.

After hearing, the following order was thereupon written:

ORDER.

The motion of the petitioner, the Western United Gas & Electric Company, for authority to continue in effect the rates for gas measured by prepayment meters in the territory served by said petitioner, coming on to be heard, and the Commission being fully advised after said hearing and investigation—

Orders that the petitioner be and is hereby granted the right to install prepayment meters upon the request of consumers, and to continue in use present prepayment meters as long as desired by the consumers. The price charged for gas shall be \$1 per thousand cubic feet, when measured in prepayment meters used in the territory served by the petitioner as fully set forth in the schedules now on file with the Commission. This order is issued as an addition to the one dated at Springfield on the 4th day of December, 1914, by which authority was granted the petitioner to suspend rule 11, class D, of the rules establishing standards of service in its application to the business of the petitioner, and until further order of the Commission. Rule 11, class D, referred to is in words as follows:

“Prepayment Meters: No utility shall use prepayment meters geared or set so as to cause a rate or amount higher than would be paid if a standard meter was in use, unless the consent of the Commission is first obtained in writing.”

It is further ordered that the petitioner shall discontinue the

practice referred to in the application as being now in use, whereby a small number of meters are "set at various special higher prices by special arrangements with its customers using same, such customers being in arrears in the payment of past bills, and having agreed that the extra amount paid shall be credited upon the arrearages, gas being charged for at the rate of \$1 per 1,000 cubic feet of gas." Said special charges and classifications, rules and regulations relating thereto, applicable to such service or commodity, have not hitherto been filed with the Commission, and are not now published in accordance with the provisions of the act of 1913, public utilities commission law. The petitioner is therefore not authorized by the act or by this order, or through its present application, to charge, demand, collect, or receive a greater or less or different compensation for the two kinds of prepayment gas service. Notwithstanding that the said practice applies to only a few consumers, and the higher rates for prepayment gas sold to said consumers in arrears is in the end no higher per thousand cubic feet than charged to the same class of consumers who are not in arrears in the payment of past bills, it is considered by the Commission and so ordered, that this regulation or practice hitherto in effect is a facility or privilege not regularly and uniformly extended to all corporations and persons in the territory served by the petitioner.

NEW YORK PUBLIC SERVICE COMMISSION, SECOND DISTRICT.

**IN RE COMPLAINT OF THE CITY OF ROCHESTER
AGAINST NEW YORK STATE RAILWAYS.**

[Case No. 3919.]

Commissions — Power to fix rates — Effect of maximum rate statute.

A statute establishing a 5 cent maximum fare for street railroads does not prevent the Commission from fixing a lower rate, where the maximum statutory charge is unreasonable or unjust.

Return — Basis — Property value.

The language of the public service commission law empowering the Commission to determine the reasonableness of railroad rates seems

to contemplate the formation by the Commission of a belief based upon evidence generally that the rate complained of is unreasonable and unjust, and that the Commission, in determining the reasonable rate for the future, shall pay due regard to a fair return upon the property value.

Return — Surplus — Contingencies.

The language of the public service commission law empowering the Commission to determine the reasonableness of railroad rates seems to contemplate that the Commission, in determining a reasonable rate for the future, must pay due regard, among other things, to the necessity of reserving from income moneys for surplus and contingencies.

Street railway rates — Unreasonableness — Matters to be considered.

The Commission, in forming its opinion as to whether a challenged rate is unreasonable, may take into consideration all matters necessary to that determination in each particular case as presented by the evidence, although some of such matters must also be considered in a case where the Commission has the further duty of fixing a lower rate to be charged as a maximum in the future.

Evidence — Street railway rates — Presumption of reasonableness.

A 5 cent street railway fare complained of, which has not only been in force for many years, but which agrees with a maximum rate of fare long prescribed by the legislature, is presumed to be reasonable.

Street railway rates — Reasonableness — Preliminary considerations for determining.

In a case in which a city complains that the 5 cent fare of a street railway company is burdensome and unreasonable, there are no preliminary considerations by which to determine whether such rate is, in or of itself, or as applied to the community in general, unreasonable or unjust.

Street railway rates — Reasonableness — 3 cent fare for rush hours.

The mere fact that a street railway company is earning an excessive rate of return upon a valuation of its property used in serving the public does not justify the Commission in ordering a reduction from a 5 cent to a 3 cent fare during rush hours, unless such excess is shown to be sufficient to cover the amount of probable loss caused by such reduction.

Valuation — Street railway — Agreement between complainant and company.

A valuation of the property of a street railway company agreed upon between a complaining city and the company will be taken by the Commission as the basis for determining the reasonableness of a proposed reduction in fares from 5 cents to 3 cents during rush hours, however pertinent and forcible objections to any part of such valuation might be in an open case involving the valuation of such property.

Return — Operating expenses — Subway rental.

Rental paid by a street railway company for a subway containing wires to its manholes used to take current to its lines is a proper item of current expense.

Return — Operating expenses — Damages.

Sums paid by a street railway company for accrued accidents and damages should be taken into account in estimating operating expenses.

Return — Operating expenses — Increase in wages — Arbitration award.

Increase of wages of employees of a street railway company as the result of an award made pending the investigation of a complaint asking for a reduction of fares during certain hours, and covering the period under investigation, was considered by the Commission in determining the actual operating expenses of the company for that period.

Return — Amount — Reasonableness.

The rate of fare of a street railway company should not be reduced from 5 cents to 3 cents during rush hours, where it appears that a return from the present rate upon an agreed valuation is 8.58 per cent, and the percentage of return on the reduced revenue would be 4.55 per cent, and where, if an increase in back wages allowed by arbitrators and considered by the Commission in arriving at such percentages should be disregarded, the percentage of return from the present rate would be 9.03 per cent and from the reduced revenue only 5 per cent.

Return — Street railway — Increase of revenue due to lower fares.

The Commission is not justified in ordering a reduction of fares of a street railway company from 5 cents to 3 cents during rush hours, on the speculation that an assumed reduction in revenue resulting therefrom amounting to 20 per cent of the present yearly revenue from operation, and to 2 per cent on the agreed valuation, would be made up by an increase in traffic, owing to lower fares.

Return — Surplus for improvements.

A reserve for surplus above operating cost should be made from the revenues of a street railway company to provide for improvements, either by full payment therefor from such surplus, or to meet increased charges on required additional bond capital, or return upon necessarily issued additional stock.

[February 16, 1915.]

PROCEEDING to compel the reduction of the fare of a street railway company from 5 cents to 3 cents during rush hours; complaint dismissed.

Appearances: B. B. Cunningham for complainant; D. M. Beach and Walter N. Kernan for respondent.

Decker, Commissioner: The rate of fare on the street railways of respondent in the city of Rochester is 5 cents, with transfer privilege to any part of respondent's system in that city and for certain short distances outside of the city, all comprising the so-called Rochester 5-cent-fare zone.

The complainant prays that this 5 cent fare be reduced to 3 cents for transportation between 5 o'clock A.M. and 8:45 o'clock A. M., and between 4:30 o'clock P. M. and 6:30 o'clock P. M. on all days of the week except Sunday.

Complainant also asks for a rerouting of respondent's University and Lyell avenue cars in Rochester, and discontinuance in use of respondent's State street car house in Rochester for housing cars, except for such cars as are needed to be kept in the center of the city for emergency purposes. These matters were not gone into in testimony, and the case as submitted treats only of the fare question. The rerouting and car-house questions are reserved by the Commission for inspection, report, and further consideration.

Under § 181 of the railroad law respondent is limited to a charge of 5 cents for the transportation of passengers within the city of Rochester, and for such single fare of 5 cents it must furnish a continuous ride between all points on its lines within that city. This involves the transferring of passengers between its various lines as the same are operated. One fare of 5 cents, therefore, entitles the passenger to ride a few blocks or long distances within that large city and over the respondent's connected lines according to his intended destination.

It is proposed by complainant that during the busiest travel hours of the day the respondent shall reduce this maximum fare of 5 cents to 3 cents, the reduction amounting to 40 per cent of such maximum fare.

The act of the legislature in fixing a 5 cent maximum fare for street railroads in cities and incorporated villages (§ 181, railroad law) does not bar action by this Commission requiring a reduction of such fare as charged by any street railroad company upon a showing that such fare of 5 cents for a general or particular service rendered is unreasonable or unjust. *Bus. Men's Ass'n of Ticonderoga v. D. & H. Co.* 2 P. S. C. 2d Rep. 78.

Section 49 of the public service commissions law empowers the Commission whenever it shall be of opinion that a railroad rate is unjust, unreasonable, unjustly discriminatory, or unduly preferential, or is anywise in violation of any provision of law, to determine the just and reasonable rate to be thereafter observed and in force as the maximum charge, notwithstanding a higher

rate has been authorized by statute; but in so determining the future maximum rate the Commission is directed to pay due regard, among other things, to a reasonable average return upon the value of the property actually used in the public service, and to the necessity of making reservation out of income for surplus and contingencies. The language of the statute seems to contemplate the formation by the Commission of a belief based upon the evidence generally that the rate complained of is unreasonable or unjust, and that then, in determining the reasonable rate for the future, the Commission must pay due regard to a fair return upon the property value and the necessity of reserving from income moneys for surplus and contingencies. We think, however, that the Commission may take into consideration in forming its opinion as to whether a challenged rate is unreasonable all matters necessary to that determination in each particular case according as the same are involved in the evidence presented, although some of such matters must also be considered in a case where the Commission has the further duty of fixing a lower rate to be charged as a maximum in future. This ruling has some importance in view of the fact that this case is clearly to be distinguished from the general mass of carriers' rate cases arising under the regulating statute.

In the case of a railroad freight rate it is comparatively easy to determine upon the general facts pertinent to the traffic itself whether the rate is so high as to prohibit its movement for sale, or whether it unduly diminishes the shipper's obtainable profit, or whether the rate is out of line with other rates on like traffic charged by the same or other carriers in the same general section of country, or whether the rate for the service involved is relatively too high or disproportionate as compared with rates on other traffic, or whether the rate challenged is unjustly discriminatory or subjects a complainant to undue prejudice; all of which, together with many other elements according to particular situations disclosed, are matters directly relating to and having government upon the relation of shipper and carrier, as distinguished from the question of necessary revenue to the carrier. That is why so many, indeed nearly all, cases involving separate freight rates have been and are decided with little if any ref-

erence to the railroad property value or needed revenue from operation.

Where a carrier or group of carriers makes general advances in freight rates, on suspension thereof pending investigation by a Commission, the carriers must justify such advances on the score of necessary additions to net earnings for debt-paying and dividend purposes, or upon other special grounds.

In the Schenectady Six Tickets for a Quarter Case, the complainant sought an order under a provision in the public service commissions law which specially authorizes complaint where a cheap form of ticket has been on sale and has been discontinued within five years prior to the time of complaint. So it was in the cases before this Commission involving passenger commutation tickets to and from New York city, where the carriers had materially advanced prior existing commutation rates and there was plain basis for complaint against the recent action of the railroad companies. In all cases of advanced rates the basis of complaint lies in the advance itself, and particularly where the previous rates have been long in effect. It is a familiar rule that rates long maintained by a carrier afford presumptive evidence of reasonableness in cases where new advanced rates are the subject of complaint, and that rule as affecting carriers is now expressly stated in the regulating statute as the result of amendatory legislation in 1914. In this case we have a rate complained of which has not only been long in force, but is, according to a maximum rate of fare prescribed years ago by the act of the legislature.

The foregoing discussion of the various classes of carriers' rate complaints indicates that no common rule exists or can exist as to the primary treatment of rate complaints. In cases involving a separate freight rate or passenger rate as distinguished from a mass of others, we have certain primary considerations. In cases involving rate advances, whether proposed by the carrier or complained of by shippers, the advances themselves constitute the cause of action and the burden of justification is upon the carrier. Various cases of discrimination may also cast the burden of proof upon the respondent. When the statute prescribes a procedure in regard to special rate tickets discontinued within a period of time, and demand for their restoration is made by complaint

under such special procedure, we have a special class of cases where cause of action is plainly implied.

This case, however, is one where the complainant is the city of Rochester, and complains that respondent's 5 cent fare, which accords with the maximum rate long fixed by statute, is burdensome and unreasonable to a large part of the riding population in that city, and should be less during certain hours of each business day. As to such a case there are no preliminary considerations by which to determine whether the rate of fare is in and of itself, or as applied to the community in general, unreasonable or unjust. The rate has not been advanced. The rate has been long in force. It applies throughout the whole city and takes in all line extensions which may be made from time to time. The rate itself is a maximum charge fixed by the legislature. It is the common street car rate of fare throughout the entire state in all cities and other municipalities. No special or peculiar conditions affecting actual travel are shown to exist which do not obtain in other large cities such as Buffalo, Syracuse, Utica, or Albany, certainly none that create any sharp distinctions. The grounds of complaint are that a large part of the riding public of Rochester travel daily to and from their business or labor locations, that such part is composed of many persons to whom a reduction of 40 per cent of the transportation charge would constitute a very substantial benefit, that the fare reduction would tend to encourage home locations away from the center and more congested sections of the city, and also aid the settling up of the outer sections of the city, and lastly that the company can afford to make the suggested reduction, and should do so in the public interest.

The maximum benefit per person from the reduction demanded would be 4 cents per day, 24 cents per week, or \$12.48 per year, with two rides each week day of the year. This amount per day or year bears in greater degree upon those who have the smaller incomes and in greatest degree upon those having the smallest incomes. On the other hand, the reduction demanded reduces respondent's 5 cent fares in the rush hours by 40 per cent. A case of this kind is peculiar as compared with the other classes of cases described. In such a case we must assume that the rate complained of is not unreasonable unless it shall appear that the company's revenue from Rochester traffic is so much in

excess of a fair return that the reduction as demanded in the complaint would be fair and reasonable and is required in the public interest.

Complainant's case is not established by a showing that respondent is earning an excessive rate of return upon the value of its property used in serving the public in Rochester, unless such excess is shown to be sufficient to cover the amount of probable loss caused by reduction of the 5 cent fare to 3 cents during the rush hours of week-day travel. A comparatively slight excess of revenue far below the loss demonstrated by the claimed reduction would not warrant an order in complainant's favor.

We omit any extended discussion as to whether a possible reduction in respondent's fare should not be applied to fares at all times of the day, and so that all patrons of respondent in Rochester might benefit from the reduction, instead of applying the whole amount to the benefit of a particular large class of riders however deserving they may be, since the case has not been tried or argued so as to directly involve such question. It must be admitted that if respondent were to voluntarily establish a 3 cent rate for rush hours the 5 cent traveler in hours when traffic is lightest would have some basis for complaint of preference and discrimination in favor of the passenger in hours when travel is heavy and respondent's car equipment is most greatly taxed. Whether such a complaint would be sustained need not now be determined, since the appeal here is for an order requiring favoring rates for rush-hour riders, and if we now find a basis for an order favoring such rush-hour riders we must find also that the non-rush hour riders would not be thereby subjected to unlawful prejudice or discrimination. It may be that a reduction to the extent here demanded would be practicable while a similar reduction for all riders during the day would be impracticable, but no opinion upon that point need be expressed unless it shall become necessary under the findings about to be made.

The question for present determination then is this: Is respondent's total revenue from its operations within the Rochester 5-cent-fare zone excessive to the extent that a proposed reduction in fare from 5 cents to 3 cents during week-day rush hours is fairly justified and required?

Proof has been adduced as particularly applying to respond-

ent's Rochester 5-cent-fare zone, and though the question was raised in this case as to whether the operations and revenue of the company throughout its whole territory of operation, including Syracuse, Utica, and Oneida as well as Rochester and its interurban lines, should be considered, we are not required in the presence of such proof to decide that question for the purposes of this proceeding.

For the purposes of this case complainant has proposed, and respondent has agreed, to use the valuation of the railway property in Rochester reported to the State Tax Commission for the year ending January 30, 1914, together with the additional value placed upon the property by the State Tax Commission for franchise tax purposes during 1914. The total of this valuation is \$10,791,124. It follows that we have here, as covering valuation of property, an "agreed case," as by and between the parties, and therefore one, concerning that branch of the case, in which there is no room for further inquiry and no basis for stating objections concerning any part of such valuation, however pertinent and forceful in an open case involving valuation such objections might be. The 5-cent fare zone embraces some small area outside of the city limits, to which respondent calls attention, and indicates a small increase in valuation, but we have no accurate basis for the computation, and it is proper to use only that valuation which has been presented by agreement of the parties.

A preliminary inquiry here was, "What reduction in earnings would result from the rate reduction demanded in the complaint?"

That question could not be answered from any previous records of the company, since it had not kept records of its fares collected during the hours mentioned in the complaint as the hours on week days when the proposed fare reduction should be applied. Manifestly it was necessary to require such a record to be kept for a sufficient period of time in order that some fair estimate might be made as to the reduction of earnings here involved. Accordingly a two months' check (July 27 to September 27, 1914) of the traffic during the hours mentioned in the complaint, herein called "rush hours," was directed, and it was further directed that such check be applied to the yearly week day revenue of the company for the year ending June 30, 1915, to arrive at

an estimate of the loss in gross revenue to which the company would be subjected on this basis.

Respondent's figures are slightly in error, since the total found by adding up a column showing computations of each day's receipts does not correspond with the total found by adding up the column of 5 cent passengers and 3 cent passengers and multiplying such additions by 5 cents and 3 cents respectively. This probably results from using actual receipts, instead of multiplying the number of passenger rides. We are using the latter as more closely corresponding to the account of revenue in rush hours which are computed on the riding basis.

During the two months' period of checking, the total 24 hours' receipts were \$464,489.47.

And the total 5 cent rush hour receipts were \$175,264.95.

The ratio of 5 cent rush hour receipts to 24 hour receipts was 37.73 per cent.

For the year ending June 30, 1914, the total of week-day receipts was \$2,878,742.79.

Applying the ratio 37.73 per cent, the total of 5 cent rush hour receipts for that year would be estimated at \$1,086,149.64.

Reduction of last item by 40 per cent to reach 3 cent fare for rush hours gives total reduction, if applied, of \$434,459.86.

There were 3 cent school children rides to the number of 214,044 during the two months' period of checking. These are included in the item of \$464,489.47 first given above. They are not included in the second item of \$175,264.95. The ratio sought is the percentage of 5 cent fares during rush hours to the total of all receipts including 3 cent fares for the 24 hours, and as stated that is 37.73 per cent, which is the factor to apply against the total of week-day fare receipts in order to arrive at a justifiable working estimate of the total number of 5 cent rush hour receipts for the year, and then to compute the effect of a reduction of such fares from 5 cents to 3 cents upon that year's fare receipts.

This method of arriving at the 5 cent fare receipts for the rush hours during a given year, while not accurate, is the best that can be used in the absence of record figures of the fares taken in during the rush hour period for each day in that year. The company claims that the period of check was one of comparatively

dry weather and that a greater percentage of rush hour passengers doubtless rode throughout the year when the average inclemency of weather was greater, and it presented some figures of rainfall and other storm records to show that this would be so. Against this is the fact of summer riding during the period of check by visitors and inhabitants. We think on the whole that the rule underlying the estimate should be adhered to, though it may be considered that the rule perhaps works against rather than for the company.

Respondent's gross revenue from transportation and from miscellaneous sources within the five cent fare zone was for the year ending June 30, 1914	\$3,312,341.59
Its total expenses for operation were	\$2,014,924.07
Plus taxes	263,664.36
Plus nonoperating revenue balance (deficit)	94.48
	2,278,682.91
Gross income	
	\$1,033,658.68

Respondent shows some omitted items from the statement presenting that result.

1. There is an omitted expense item for subway rental. This subway contains wires to its manholes used to take current to its lines. It is a proper item of current expense and should be added as such	\$19,031.98
2. It presents an item of accrued accidents and damages for the year remaining unpaid of \$108,209.39. Our accountant finds this amount to be erroneous and that while the amount to be allowed is substantial and equal to \$50,000 or more, it is impossible to arrive at a proper estimate without an extended and tedious examination. We should be upon the safe side in taking this item into the case, and we are of the opinion that it should not be estimated for this purpose above	40,000.00
3. Subsequent to June 30, 1914, and while the hearings of this case were progressing, respondent found its expense for wages increased as the result of an arbitration award. Applying that increase to its expense here used is just, because it certainly must be paid and is now being paid, and in fact dates back by the terms of the award to May 1, 1914. It would be in this case if the figures for the present year were used applied to the five cent fare zone in Rochester. This increase in wages for the year June 30, 1914, would have amounted according to the testimony to	48,506.00
Total	
	\$107,537.98

4. Respondent also claims an amount chargeable for extraordinary renewals and replacements to surplus account. This as being in addition to that represented in its established depreciation reserve, and which it must pay out on account of accrued depreciation in excess of such reserve. The maximum claimed

amount is \$218,194.08. This last item will be mentioned in connection with another branch of the case.

Complainant claims that respondent is paying to the Rochester Railway & Light Company an extravagant price for electric power, and submitted comparisons with certain prices paid by the Syracuse and Buffalo street railroad companies. It was agreed that this power-rate comparison should be investigated by the Commission's engineer, and his report served upon the parties, and further hearing should be had as to the power rate if desired. The engineer's report finds that the power rate paid by respondent is not unfavorable as compared with the prices paid by the Syracuse and Buffalo roads, and both parties have submitted the case with that report in evidence and without desiring further hearing.

We have found above that there should be deducted \$107,537.98 from the gross income of \$1,033,658.68 because it represents expenses properly chargeable in the revenue statement. This leaves a net balance of \$926,120.70. If we deduct now the estimated loss from the reduction of the rush hour 5 cent fares to 3 cents, \$434,459.86, we have left \$491,660.84 as the sum on the face of the figures which respondent would have had left if it had charged 3 cents instead of 5 cents during the rush hours of each week day in the fiscal year to June 30, 1914. This, of course, takes no account of any increase of business that might have resulted, nor of any increased expenses that might have been entailed.

On the basis of the valuation which the parties have agreed to use in this case, \$10,791,124, the company's income after paying operating expenses, taxes, etc., as above found for this case, \$926,120.70, gave it 8.58 per cent on such valuation.

The following table graphically shows percentage return results from the use of various base figures.

1. Agreed valuation basis \$10,791,124.
2. Income from operation, etc., \$926,120.70.
3. Revenue reduction caused by reducing 5 cent fares to 3 cent in rush hours on week days \$434,459.86.
4. Revenue after deducting last item \$491,660.84.
5. Present percentage return on agreed valuation 8.58 per cent.

6. Percentage of 5 cent to 3 cent reduction on agreed valuation 4.02 per cent.

7. Percentage return on agreed valuation from revenue after deducting 5 cent to 3 cent reduction 4.55 per cent.

8. If increase of wages, \$48,506, is not regarded as an added expense the income would be \$974,626.70.

9. Percentage return from such revenue upon agreed valuation 9.03 per cent.

10. Revenue after deducting reduction by lowering fare in rush hours from 5 cents to 3 cents \$540,167.54.

11. Percentage return on agreed valuation after deducting 5 cent to 3 cent reduction 5 per cent.

12. A 6 per cent return upon the agreed valuation would be \$647,467.44.

If we exclude the wage increase we have a maximum return upon the agreed valuation of 9 per cent, and this would be pulled down by the desired reduction to 5 per cent. With the wage increase included there would remain after taking the reduction to 3 cents in account a return of about $4\frac{1}{2}$ per cent.

Would there be any increase of net revenue resulting from increased travel under the reduced fares? And if so, would such increase reach a fair return upon this agreed valuation? Let it be assumed that such increase of net revenue must be 2 per cent in order to reach a fair return upon the agreed valuation. Two per cent upon the valuation is equal to \$215,822.48. This is more than a 20 per cent increase of the entire net revenue for the year ended June 30, 1914, hereinabove stated to be \$1,033,658.68. This required increase of 20 per cent in net revenue must come from an increase of riders due to the 3 cent fare during the busiest hours of the day when the present car capacity is most heavily taxed, and new travel to bring in that net revenue increase must be sufficient to pay for the operation of the required additional cars to properly accommodate all passengers during the rush hours. No evidence was introduced to show that a large number of passengers who now walk would ride, or that a large number of passengers would ride more than they do now during the rush hours under a decreased fare, and obviously no such evidence could be presented. In all cases the effect of a reduced passenger rate upon traffic is largely specula-

tive. In this case the reduced fare would not fill empty or partly empty operated cars, for it is within our general knowledge that Rochester cars in the rush-hour periods, as in most of the large cities, are all fairly and we think fully required to meet present demands. We cannot assume from these considerations that the 3 cent fare as applied to the rush-hour travel would bring up the net revenue to any such extent as under the figures guiding us here must result in order to warrant the reduction sought upon this complaint. If the difference were small we might find that some increase of net revenue would result. This large deficit, amounting to as much as 20 per cent of the 1914 revenue from operation and 2 per cent of the agreed valuation, is far beyond any increased net revenue which can upon any broad estimate be safely contemplated as a probable result of the proposed decrease in fare.

If we totally disregard respondent's insistent claim that a further large sum of over \$218,000 should be deducted from the year's net revenue used herein in order to fully allow for depreciation accruing during the year, we are still required under command of the law to make fair allowance for surplus and contingencies, and we know that respondent must continue to improve its property by new cars, line extensions, and various other betterments to accommodate the growing public-service demands upon its facilities. It is of prime importance that the service of this respondent in Rochester, as well as elsewhere in its territory, shall not only be sufficient in general, but in all respects adequate. This Commission should not, if it could, strike down the revenues of this company to effect a reduction of fare and leave its resources for improving and keeping up the efficiency of its service insufficient for that prime purpose. A reserve for surplus above operating cost is essential to provide for these improvements either by full payment therefor from such surplus, or to meet increased charges on required additional bond capital or return upon necessarily issued additional stock. We are clear that whatever increase in travel the 3 cent fare would cause it could not from the figures we have before us so increase the net revenue from operation that the return upon the valuation herein used by agreement would be adequate to meet the requirements of law. If the valuation is not too high, and that is a matter which can-

not be discussed under the agreement to use the valuation, then the return of $4\frac{1}{2}$ to 5 per cent is too low to permit the reduction demanded. There is no escape from that conclusion.

In so holding we are controlled by the law, with no room in any sense for the exercise of discretion. A 6 per cent return upon capital employed in the public service has been deemed to be a minimum fair return, and this after all other allowances necessary to the conduct of the business shall have been made. In many cases a considerably higher rate of return has been held to be required. There may arise here and there cases of over installation of property or over extension of lines where, the general rate being involved, peculiar conditions would justify the conclusion that a lower return than has been ordinarily allowed would be fair. But we have no such peculiar conditions in this case where a special rate is demanded, and all of respondent's property and lines are fully required for the public service in Rochester. Since we find that the proposed reduction would reduce respondent's net revenue from operation on the basis of the traffic for the year ended June 30, 1914, to as low as $4\frac{1}{2}$ or 5 per cent upon the valuation agreed upon by the parties herein, it is idle to speculate upon what would be a fair return upon such valuation to the respondent.

For the reasons above expressed, the complaint, upon the record as made in this proceeding, must be held not sustained, and an order must enter that the complaint is dismissed.

APPENDIX.

MASSACHUSETTS BOARD OF GAS AND ELECTRIC LIGHT COMMISSIONERS.

RE NORTHAMPTON GAS PETITION.

After the recommendations of the Commission (see page 618, ante) were handed down, the following communications were ex-

changed between the Northampton Gas Light Company and the Commission:

Boston, Mass., Feb. 11, 1915.

The Board of Gas and Electric Light Commissioners, 15 Ashburton Place, Boston, Mass.

Gentlemen:—

The directors of the Northampton Gaslight Company acknowledge the receipt of the decision of the Board, made on the 30th day of January last, recommending that on and after February 1st, 1915, the net price of gas sold by the Northampton Gaslight Company should not exceed \$1 per 1,000 cubic feet.

The directors have carefully considered the recommendation of the Board, and believe that, unless the future furnishes more favorable conditions for operation than it has been possible for the company to operate under during the last year, the acceptance of the recommendation of the Board would not permit the company to make any adequate profit on the property and money it has invested, and which it devotes exclusively to the public purpose of making and selling gas. The directors, however, have decided at the present time to accept the recommendation of the Board, and to make an effort to so operate the company under present conditions that some adequate return may be made on its investment. If this effort should not be successful, the directors will immediately ask the Board for authority to raise the price of gas.

Yours respectfully,

Northampton Gaslight Company,

By Alfred Clarke,

President.

February 12, 1915.

Mr. Alfred Clarke, Pres., Northampton Gaslight Co., Northampton, Mass.

Dear Mr. Clarke:—

In behalf of the Board I desire to acknowledge your favor of the 11th, informing the Board of the acceptance by your directors of the recommendation of the Board made on the 30th day of January last relative to the price of gas to be charged by your company on and after the 1st day of February, 1915.

The Board has also noted the views which you express relative to the possible unfavorable effect of the new price upon the company's affairs. While the Board does not share in this fear, yet every decision as to price relates to the future, and the soundness of the Board's judgment can only be demonstrated by experience. Should this experience justify your fears after a faithful and earnest trial of the new price on your part, it would present a proper case for an application to the Board for a revision of the price.

Very truly yours,

(Signed) Alonzo R. Weed,
Chairman.

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ACCOUNTING.

1. A railroad company which makes a purely fictitious charge of \$1,000,000 to its capital account to represent the par value of all its authorized capital stock, and which, in addition to interest on its funded debt, has paid dividends in amount equal to more than one half of the reproduction cost new of its property as found by the Commission's valuation, should revise its accounts to show its financial condition in accordance with the facts. Re Sugar Pine R. Co. (Cal.) 728.

2. Railroad, street railroad, telephone, telegraph, and express companies ordered, from and after July 1, 1915, to keep and render their accounts in manner and form prescribed by the Interstate Commerce Commission for railroad companies, and to observe the rules and decisions of that Commission relating to classification and allocation of particular items, unless otherwise ordered. In Re Accounts of Railroad Cos. (Me.) 140.

3. A farm telephone company which had not kept an accounting of its finances was ordered, on an application for an increase in rates, to open and keep a set of books to show the operating revenue and expenses. Re Lynch Teleph. Co. (Neb.) 64.

4. Railroad, street railroad, telephone, telegraph, and express companies are ordered to close their accounts annually, and take balance sheet on June 30th, beginning June 30th, 1915, and to file same with the Commission on or before September 1st following. In Re Accounts of Railroad Cos. (Me.) 140.

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1. A ruling of a state court that an order of the state Railroad Commission, directing a railway company to discontinue the practice of demanding prepayment of freight from one connecting carrier while not exacting it from another, is authorized by a statute requiring railways to furnish customary facilities for the exchange of freight, and empowering the Commission to prevent unjust discrimination, is binding on the Federal Supreme Court on writ of error to the state court. *Wadley Southern R. Co. v. State* (U. S.) 106.

2. It was provided in an order of the Commission modifying the terms of a previous order relating to the taking of the property of a water company by a city in respect to payment, that the rights of the water company to a complete review as to the amount of compensation to which it was entitled should not in any manner be prejudiced thereby. *Re Janesville Water Co.* (Wis.) 1047.

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APPORTIONMENT.**In case of single utility — Of values.**

1. A segregation of the property of a water company supplying a city and an oil field on the basis of the relative amounts used may be unfair to the city, where it appears that if the use of the waters in the oil field should cease, the city would be charged with the entire value of the property, which would be more than would be necessary for the service. *Coalinga v. Pleasant Valley Water Co.* (Cal.) 575.

— Of earnings.

2. In an apportionment of revenues of a railroad system on a mileage basis for the purpose of determining whether a branch line is operated at a loss, consideration should be given the usual contention that rates involving branch-line service are made relatively higher per mile than main-line rates to compensate for the relatively higher cost of operation, and compensated mileage should be allowed the branch line instead of straight mileage. *Carnegie Brick & Pottery Co. v. Western P. R. Co.* (Cal.) 1079.

3. A branch line of a railroad is not shown to have been operated at a loss where it appears from the evidence that the revenue has been apportioned on a straight mileage basis, instead of on a compensated mileage basis, and that certain general operating expenses have not been apportioned. *Carnegie Brick & Pottery Co. v. Western P. R. Co.* (Cal.) 1079.

— Of costs.

4. In estimating the costs of gas service in order to determine the reasonableness of a proposed minimum charge, certain expenses, such as commercial administration, work on consumers' premises, salaries, and expenses of general offices and general office clubs, general office supplies expenses, and miscellaneous general expenses, should be apportioned in accordance with the extent to which they are proportionate to the number of customers or to the demand on the plant, rather than placed in one class or the other without attempt at division. In *Re Wildwood, A. & H. B. Gas Co.* (N. J.) 342.

5. The number of demand units for gas service should be determined with reference to the relative capacities of the different meters in use, rather than with reference merely to the number of meters in use. In *Re Wildwood, A. & H. B. Gas Co.* (N. J.) 342.

6. In determining the cost of electric lighting service, the Commission apportioned 65 per cent of the total costs to capacity and 35 per cent to output expenses. *Re Ladysmith Lighting Co.* (Wis.) 1050.

7. The rent of a gas company's office, also used as an appliance store, is a reasonable operating expense, although to the extent to

APPORTIONMENT—continued.

which the office is used as an appliance store the rent is an expense connected with the sale of appliances, and only the net loss, if any, incurred thereby, should be introduced as an operating expense. *Re Northampton Gas Petition (Mass.)* 618.

8. In a combined gas and electric business the costs should be so apportioned and the prices so adjusted that the consumers of one department will not have to assume any of the costs properly belonging to consumers of the other department. *Re Lawrence Gas Co. (Mass.)* 814.

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9. The construction necessary for the extension of the lines of a gas and electric company to certain consumers was apportioned between the company and the consumers, and the company was ordered to complete its portion thereof within twenty days after completion by the consumers, where it appeared, after consideration of the costs of extending such service and probable revenue therefrom, that it would be unreasonable to require the company to extend the service entirely at its own expense. *Warren v. Pacific Gas & Electric Co. (Cal.)* 702.

10. Upon the compulsory physical connection of the lines of a local telephone company with those of another company furnishing long distance toll service through the same town, it was ordered that the expense of making such connection should be borne equally by the two companies. *Darnell v. Pioneer Teleph. & Teleg. Co. (Okla.)* 80.

11. A company constructing a new line of railroad, crossing three other railroads at grade, was ordered to pay one half of the total expense of maintaining a joint interlocking device for all, the others being required to pay but one sixth each, under a statute providing that the expense of maintaining an interlocking device at the crossing of a previously constructed railroad by another railroad shall be equally divided between them. *Ann Arbor R. Co. v. Michigan C. R. Co. (Ohio)* 549.

12. The cost of constructing a steel bridge over the tracks of a railroad company to accommodate a new county road was ordered to be borne, one third by the county, and two thirds by the railroad company. *Harnett County v. Atlantic Coast Line R. Co. (N. C.)* 635.

13. A new highway laid out by a town to cross a railroad was ordered to cross at grade, separation being impracticable, the cost thereof to be borne equally by the town and railroad company. *Remington v. Chicago, M. & St. P. R. Co. (Wis.)* 147.

—Of earnings.

14. Upon the compulsory physical connection of the lines of a local telephone company with those of another company furnishing long distance toll service through the same town, it was ordered that the local company should receive 12½ per cent of all toll revenue collected for toll traffic originating or terminating on its exchange or rural lines. *Darnell v. Pioneer Teleph. & Teleg. Co. (Okla.)* 80.

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1. Carriers should not neglect traffic for the reason that regular rates cannot be secured owing to water competition, if rates can be secured that will yield something above the additional cost of handling, and will not result in unjust discrimination. *Mason-Donaldson Lumber Co. v. Chicago & N. W. R. Co. (Wis.)* 149.

2. The time specified in bills of lading within which written claims for damages in connection with the transportation of freight between points in Texas must be presented is fixed at not less than six months after such claims shall have accrued. *Re Bills of Lading (Tex.)* 866.

3. The mere showing that the subscribers of a telephone company have no means of communicating with a railroad depot is not sufficient to authorize an order compelling the railroad company, in the furtherance of its duty as a common carrier, to install a telephone of the company at the depot. *Clay County Teleph. Co. v. Chicago, M. & St. P. R. Co. (Mo.)* 61.

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CERTIFICATE OF PUBLIC CONVENIENCE.

To permit competition, as remedy of municipality against utility, see Municipality, 3.

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1. An ordinance of a municipality granting an electric company the right to erect wires over a highway was approved, and the certificate of public convenience granted on condition that such action should not be construed as a grant of authority to furnish service in such municipality. *Re Lehigh Nav. Electric Co. (Pa.)* 773.

2. An agreement by a municipality to take over the mains and water lines of an existing water company, at a fair valuation, is not a necessary prerequisite to the granting to the municipality of a certificate of public convenience for the erection of a waterworks system, especially where the municipality, in addition to the approval of the Commission, must also obtain permission from the commissioner of health and the water supply commissioner, and, by proper municipal action, secure estimates of the probable cost of the system. *Re Galitzin (Pa.)* 779.

CERTIFICATE OF PUBLIC CONVENIENCE—*continued.***Issuance to utility already in operation.**

3. A certificate of public convenience was issued to a telephone company, where, by virtue of its charter and duly enacted legal ordinances in a certain borough, it had without protest expended over \$50,000 in the construction of a telephone system in such borough and in adjacent boroughs, although the construction in the latter was unlawful, owing to its failure to secure the Commission's approval of its ordinances before beginning operations. *Slate Belt Teleph. & Teleg. Co. v. Blue Mountain Teleph. & Teleg. Co. (Pa.)* 757.

4. A certificate of public convenience was issued to a telephone company to maintain and operate its telephone system in localities where its plant had been constructed and operation begun, without the approval by the Commission of the ordinances issued to it, where it appeared that the Commission had no power to restrain such company from maintaining and operating its plant, in a portion of its chartered territory, which portion contained such a limited field of population as to make impossible the conduct of a successful plant, and would result, therefore, in practically destroying the investment. *Slate Belt Teleph. & Teleg. Co. v. Blue Mountain Teleph. & Teleg. Co. (Pa.)* 757.

Issuance where field is occupied.

5. A public service corporation is entitled to protection against the occupancy of an exclusive field when a disposition is shown to hold itself in readiness to make reasonable extensions to serve new districts. *Arizona Corp. Commission v. Pacific Gas & Electric Co. (Ariz.)* 996.

6. The approval of an ordinance granting a municipality the right to erect wires over a highway for the purpose of furnishing service to a neighboring township will not be withheld and a certificate of public convenience denied on the theory that such action will enable the company to furnish service in such municipality, to the disadvantage of another company already furnishing adequate service therein. *Re Lehigh Nav. Electric Co. (Pa.)* 773.

7. The Public Utilities Commission of Ohio cannot, in the absence of express statutory authority, withhold its consent to an issue of stocks and bonds for the purpose of enabling a competing electric light and power company to acquire property and construct a plant in a certain territory, merely on the ground that the field is already occupied by a company furnishing adequate service, and that therefore no public necessity exists for another utility to furnish a like service. *Re Mahoning County Light Co. (Ohio)* 74.

8. Upon an application for a certificate of public convenience and necessity by a public service corporation desiring to enter a field already occupied, the Idaho Commission, following the California rule, will grant the certificate if it is shown that the existing company was not performing its duty to the public at the time of the threatened competition, and the applicant is able and ready to render the required service at reasonable rates. *Re Idaho Light & P. Co. (Idaho)* 2.

9. A certificate of public convenience and necessity was granted under the public utilities act of Idaho to an electric company seeking

CERTIFICATE OF PUBLIC CONVENIENCE—*continued.*

to enter a field already occupied, where the evidence showed that, although the existing company was rendering reasonably good service, it was not doing so at reasonable rates at the time the territory in question was first threatened with competition, and was not completely occupying the entire territory; and where it further appeared that the entering company could furnish power as cheaply as, if not more cheaply than, the occupying company. *Re Idaho Light & P. Co. (Idaho) 2.*

— Where existing utility is unable to give adequate service.

10. A certificate of public convenience was granted to a municipality to enable it to erect a waterworks plant, where an existing company admitted its inability to provide the amount of water needed, the question of a fair valuation of the existing company's property to be determined, if desired, at a later hearing. *Re Gallitzin (Pa.) 779.*

11. An electric light and power company was authorized to supply service in a village, where it appeared that, while other corporations had the right to furnish such service, they were not doing so, and were not in a position to do so, and did not oppose the application. *Re Carrabassett Light & P. Co. (Me.) 808.*

12. Permission was granted an electric company to enter a certain town, it appearing that, while another company was authorized to supply electric service, it was, in fact, merely furnishing gas; that the same individuals were interested in both companies; that it was their intention to consolidate them; and that the gas company consented to the granting of the petition. *Re Vinal Haven Electric Co. (Me.) 1022.*

13. A certificate of public convenience was issued to a telephone company to maintain and operate its telephone system in localities where its plant had been constructed and operation begun, without due approval by the Commission of the ordinances issued to it, where it appeared that the lines of such company formed the only means of direct communication between 975 subscribers of a local telephone company and subscribers at other important points within a radius of 50 miles of such local company, another competing company formerly covering this radius having withdrawn its connections, except upon payment of long-distance tolls, and where it appeared further that the refusal by the Commission of such a certificate would, under the circumstances, indirectly sanction the method employed by such competing company, to establish a monopoly of the telephone business in this locality. *Slate Belt Teleph. & Teleg. Co. v. Blue Mountain Teleph. & Teleg. Co. (Pa.) 757.*

— Where new company will benefit consumers.

14. Unless it is shown that the utility desiring to enter a competitive field can give such service as will be a positive advantage to the public, a certificate of convenience will be denied by the Idaho Commission, provided that the existing utility is furnishing adequate service at reasonable rates at the time of the threatened competition. *Re Idaho Light & P. Co. (Idaho) 2.*

CERTIFICATE OF PUBLIC CONVENIENCE—*continued.*

—Where new company cannot render service.

15. A contract between a municipality and a recently organized partnership for the supplying of current at a less sum than that at which it is being furnished by an existing company, such partnership apparently being without means to carry out its agreement, will not be approved where the municipality is too small to support two companies and the existing utility is furnishing adequate service at reasonable rates. Re Avoca (Pa.) 768.

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COMMERCE.

1. The traffic carried on by a Kentucky street railway corporation in connection with an Ohio corporation operating on the Ohio side of the Ohio river, in transporting passengers upon continuous and connecting tracks and across an interstate bridge between points in Covington, Kentucky, and Cincinnati, Ohio, by means of continuous trips and a single fare, and under practically the same management,—is interstate commerce. South Covington & C. Street R. Co. v. Covington (U. S.) 231.

How far Federal power is exclusive.

2. Congress has so far undertaken to regulate the subject as to invalidate, as an unlawful regulation of interstate commerce, an order of a state railroad Commission under which a carrier may be required, upon demand of a carrier or shipper, and on terms fixed by the Commission, to switch empty cars from any connection with a competing

COMMERCE—*continued.*

interstate railway to a designated side track within its own terminals in a city, for the purpose of being loaded there with goods intended for interstate commerce, and when so loaded, to move the same back to the competitor's line for continued transportation to another state, and also to accept from competing interstate lines at points within the city loaded cars brought from other states, and place them on its own side track, although such side track was the real destination contemplated at the time of the original shipment. *Illinois C. R. Co. v. De Fuentes* (U. S.) 840.

3. The Wisconsin Railroad Commission has jurisdiction over interstate trains with respect to adequacy of train service, so long as the jurisdiction is not so exercised as to be an unwarranted interference with interstate commerce. *Hughson v. Duluth, S. S. & A. R. Co.* (Wis.) 244.

4. The several states have power to regulate interstate train service by statute or through their Commissions, and aside from statutory requirements, the question of whether a railroad is performing its primary duty of furnishing reasonably adequate local service is one for the Commission to determine. *Hughson v. Duluth, S. S. & A. R. Co.* (Wis.) 244.

5. The Commission will not hesitate to require an interstate train to stop or to make proper connection within the state when such changes are necessary for adequate interstate service. *Nolan v. Chicago & N. W. R. Co.* (Wis.) 240.

5a. The Wisconsin Railroad Commission has no jurisdiction to require a railroad company to change the intrastate point of departure of a sleeping car operated primarily in interstate passenger service, unless it appears that such regulation is necessary for adequate intrastate service. *Fond du Lac Business Men's Asso. v. Chicago & N. W. R. Co.* (Wis.) 152.

— Federal inaction.

6. The absence of Federal regulation of rates for water transportation unconnected with transportation by railroad leaves a state free to prescribe reasonable rates for the transportation of passengers and goods wholly by water between two ports in the same state, over a course which traverses the high seas. *Wilmington Transp. Co. v. Railroad Commission* (U. S.) 845.

7. The absence of Federal regulation does not justify the city of Covington, Kentucky, in regulating the interstate business of a street railway company principally engaged in transporting passengers from that city to Cincinnati, Ohio, by restricting the number of passengers which the company may admit to its cars to not more than one third in excess of the seating capacity, except on certain holidays, and by requiring the company to operate sufficient cars reasonably to accommodate the public within the limits of such restriction, where compliance with such regulations will require about one half more than the present number of cars operated by the company, and more cars than can be operated in Cincinnati within the present franchise rights

COMMERCE—continued.

and privileges held by the company or controlled by it in that city. *South Covington & C. Street R. Co. v. Covington* (U. S.) 231.

8. Municipal regulation of a street railway company, principally engaged in interstate commerce, with reference to passengers riding on car platforms unless the same are provided with suitable rails or barriers, and with reference to the cleanliness, ventilation, and fumigation of the cars, does not infringe upon the Federal authority over such commerce,—at least, until such Federal authority is exerted. *South Covington & C. Street R. Co. v. Covington* (U. S.) 231.

COMMISSIONS.

Conclusiveness of order in other proceedings, see *Orders*, 1-5.

Jurisdictions and functions.

Jurisdiction and powers of over rates, see *Rates*, 1-9.

Power of, to change rates previously fixed by contract, see *Constitutional Law*, 9, 10.

Jurisdiction and power of, over security issues, see *Security Issues*, 4.

Jurisdiction and powers of Commission over service, see *Service*, 1-7.

Jurisdiction of, to grant franchise to electric company, see *Electricity*, 2.

Jurisdiction of Commission over street railways, see *Street Railways*, 1-5.

Powers of, in respect to telephone prefix, see *Telephones*, 18.

Jurisdiction of, to grant certificate of public convenience to trackless trolley, see *Trackless Trolley*, 1.

Jurisdiction of, to determine legal effect of sale of corporate property to another, see *Consolidation, Merger and Sale*, 4.

Jurisdiction of, over interstate commerce, see *Commerce*, 1-5a.

1. The Commission will take statutes as it finds them, and will not attempt to pass upon the question whether they confer authority upon it, which the courts may find to be unconstitutional. *Scobey v. Great Northern R. Co.* (Mont.) 950.

2. The Commission is without power to validate an illegal promissory note of a public service corporation. *Re Escondido Utilities Co.* (Cal.) 1071.

3. The Commission has no power to determine whether the vice president and manager of a public service company, in obtaining an option to purchase a promissory note of the company, has violated a trust. *Re Escondido Utilities Co.* (Cal.) 1071.

4. The public utility act, including the section which confers on the Commission the power to require a public utility to comply with the laws of the state and any municipal ordinance relating thereto, and to conform to the duties imposed upon it, thereby, is designed to apply to any corporation operating as a utility under a franchise. *Glen Rock v. Bergen Aqueduct Co.* (N. J.) 937.

5. The Commission's jurisdiction over public utilities extends to

COMMISSIONS—*continued.*

a corporation authorized to carry on the business of a water company in all its branches for the supplying of certain lands and the occupants thereof with water for domestic uses or both, where only a portion of its stock is made appurtenant to the land, and the control of the company is vested in outside parties. *Re North Moneta Garden Lands Water Co. (Cal.)* 645.

6. The Commission has no jurisdiction to order the removal of a high tension transmission line from the vicinity of a telephone line of earlier construction. *Ebenezer Teleph. Co. v. Milwaukee Light, Heat, & Traction Co. (Wis.)* 174.

7. A telephone company whose service and business have been interfered with by the subsequent construction of a high tension transmission line must seek its remedy in the courts. *Ebenezer Teleph. Co. v. Milwaukee Light, Heat, & Traction Co. (Wis.)* 174.

8. An ordinance of a municipality granting to an electric company the right to erect wires over a highway, which provides that the company shall file its written acceptance thereof, together with an indemnity bond, and pay a stipulated sum per annum, is upon compliance therewith a contract between a public service company and a municipal corporation, which requires the approval of the Commission and a certificate of public convenience. *Re Lehigh Nav. Electric Co. (Pa.)* 773.

9. An ordinance regularly enacted, but not duly published and posted prior to the effective date of the public service company law, must be approved by the Commission before operations thereunder are begun. *Slate Belt Teleph. & Teleg. Co. v. Blue Mountain Teleph. & Teleg. Co. (Pa.)* 757.

10. The Commission is without jurisdiction to determine whether a contract between two telephone companies by which one of such companies agrees to give up its long-distance business, and to act as long-distance toll agent of the other exclusively, is void on the ground that it is in restraint of trade. *Athens County Home Teleph. Co. v. Jackson County Home Teleph. Co. (Ohio)* 312.

11. The Wisconsin Commission has no jurisdiction over the relations between a utility official and the board of directors, unless such relations impair the service or create unreasonable rates. *Pospichal v. Muscoda Mut. Teleph. Co. (Wis.)* 99.

12. The Commission has no jurisdiction to determine the public necessity for a railroad highway crossing authorized by a regularly organized town, this being a question to be determined by the municipality in interest. *Remington v. Chicago, M. & St. P. R. Co. (Wis.)* 147.

13. The Commission has no jurisdiction to compel a railroad company to keep open and maintain its terminal dock for purposes other than giving the public access to its railroad facilities, either under a statute providing that the original termini or route of a railroad company shall not be changed without the approval of the Commission, or under the general powers of supervision and control vested in it. *Ashland v. Minneapolis, St. P. & S. Ste. M. R. Co. (Wis.)* 519.

14. The authority of the Commission is unnecessary to enable a

COMMISSIONS—continued.

water and irrigation company to receive voluntary payments from the owners of unimproved lands to add to its revenue. *Re North Moneta Garden Lands Water Co. (Cal.)* 645.

15. The Commission has no jurisdiction over a complaint, under an unfair competition statute which provides for prosecution by the attorney general, of offenders against the act. *Home Teleph. & Teleg. Co. v. Pacific Teleph. & Teleg. Co. (Cal.)* 687.

16. In a proceeding under the public utilities act for authority to make increases in rates and minima, the jurisdiction of the Commission is confined to determining from the evidence whether the proposed increases are justified; and having determined that question, it may not independently grant affirmative relief with respect to establishing rules relating to the compression and concentration of cotton. *Re Southern P. Co. (Cal.)* 850.

COMMISSIONS AND FEES.

Amortization of commissions and fees on bonds, allowance for in return, see *Return*, 27-29.

COMPARISON OF RATES.

See *Rates*, 14-17.

COMPETITION.

See *Monopoly and Competition*.

COMPLAINT.

See *Pleadings*.

COMPUTATION.

Method of computing depreciation, see *Depreciation*, 9-11.

CONDITIONS.

Imposed upon purchase of one utility by another, see *Consolidation, Merger and Sale*, 8.

CONFISCATORY.

When rate held confiscatory, see *Return*, 2, 9, 12.

CONGRESS.

Control of, over commerce, see *Commerce*.

CONSERVATION.

Of natural gas, see *Rates*, 59.

CONSOLIDATION, MERGER AND SALE.

Approval by Commission of purchase price as fixing valuation, see *Orders*, 1.

1. Telephone mergers should provide for extending, rather than

CONSOLIDATION, MERGER AND SALE—continued.

curtailing, the use of telephone facilities. *Re Valley Home Teleph. Co. (Mich.) 55.*

2. The sale of the property of one electric light company to another was approved, it appearing that adequate service for a reasonable rate would be furnished and that the service would be improved without any increase in rates. *Re Citizens' Light & P. Co. (Ohio) 510.*

3. An agreement for the sale by one water company to another of all its property, rights, and franchises, except the franchise of being a corporation, will not be approved, since this would amount to a virtual dissolution of the company in a mode not prescribed by law. *Re Holly Beach, W. & N. W. Water Co. (N. J.) 629.*

4. The Commission has no jurisdiction to determine the legal effect of a purchase by one public service corporation serving a certain territory, of the rights, privileges, and franchises of another company serving a different territory, upon the right of the purchasing company to supply a district beyond the limits of its own charter. *Re Avoca (Pa.) 768.*

5. The acquisition by a city of the franchise of an electric light and power company to sell current directly to consumers of the city, separate and apart from its physical property, under an agreement to buy such current from the company at wholesale rates for a ten-year period only, would affect the company's so-called going value, inasmuch as the company, having relinquished its franchise, would have no right to do business in the city at the end of such period. *Neenah v. Wisconsin Traction, Light, Heat, & P. Co. (Wis.) 372.*

6. A city would secure no advantage that could not be secured by an investigation into the reasonableness of rates, by acquiring separate and apart from the physical property the franchise of an electric light and power company to sell current to consumers of the city under an agreement to buy such current from the company, since in order to net the company a reasonable return on its business it would have to pay interest, taxes, and depreciation on all its property used for that city plus the actual cost of delivering current. *Neenah v. Wisconsin Traction, Light, Heat, & P. Co. (Wis.) 372.*

7. An individual owning and operating a railroad was authorized to sell the same to a railroad company incorporated for that purpose. *Re Henshaw (Cal.) 749.*

Conditions imposed.

8. An order authorizing the purchase of independent telephone exchanges by a telephone company was granted upon condition that physical connection between such exchanges and the lines of another company, which had previously been severed, should be restored. *Re Valley Home Teleph. Co. (Mich.) 55.*

CONSTITUTIONAL LAW.

Who may set up unconstitutionality of statute, see *Statutes, 1.*

Amendment of unconstitutional act, see *Statutes, 4.*

Validity of statute as dependent upon title, see *Statutes, 2.*

CONSTITUTIONAL LAW—continued.**Due process and equal protection.**

1. Statutes designed to restrict the issue of stock to actual investment do not operate to deprive the companies of their property without due process of law or of the equal protection of the law. *Re Northampton Gas Petition* (Mass.) 618.

2. The procedure under Ky. Stat. § 829, for recovery before the state Railroad Commission of reparation for payments previously made to a carrier for transportation in excess of the rates found by such Commission to be reasonable cannot be said to deny the due process of law guaranteed by U. S. Const., 14th Amend., on the theory that there is no formal issue and no method of requiring the production of evidence, where there were pleadings sufficiently formal, and the carrier was permitted to raise such issues and introduce such evidence as it desired, and there is nothing to show that it suffered for lack of compulsory process against witnesses. *Louisville & N. R. Co. v. Finn* (U. S.) 121.

3. Due process of law is not denied a railway company, contrary to U. S. Const., 14th Amend., by an order of a state Railroad Commission, made under legislative authority, directing the company to discontinue its practice of demanding prepayment of freight from one carrier while not exacting it from another. *Wadley Southern R. Co. v. State* (U. S.) 106.

—Additional servitude.

4. The carriage by a street railway of freight not destined for the inhabitants of a city is not a proper urban servitude upon the abutting owners, but an additional servitude, and under the Constitution neither a city nor state can authorize or require such service without provision for compensation to or releases from abutting owners. *Wisconsin Veterans' Home v. Waupaca Electric Light & R. Co.* (Wis.) 251.

—Excessive penalties.

5. A carrier which, after reasonable notice of the making of an administrative order by the state Railroad Commission, failed to resort to the safe, adequate, and available remedy under Ga. Civ. Code 1911, § 2625, by which it could test the validity of such order by a suit in the courts against the Commission, but instead attacked its validity when sued under § 2667, for the penalty which that section imposes for violations of such order, and which may be any amount, up to \$5,000 a day, could be subjected to such penalty, where that defense proved unsuccessful, without denying the equal protection of the laws or due process of law guaranteed by the 14th Amendment to the Federal Constitution. *Wadley Southern R. Co. v. State* (U. S.) 106.

6. A state statute under which enormous penalties are imposed upon a railway company for violating lawful administrative orders of the state Railroad Commission is void under U. S. Const., 14th Amend., although such orders are made after full hearing before the Commission, if access to the courts to test the constitutional validity of the Commission's orders is denied, or if the right of review actually given is one of which the carrier may avail itself only at the risk of

CONSTITUTIONAL LAW—continued.

having to pay such penalties if the order is found to be valid. *Wadley Southern R. Co. v. State* (U. S.) 106.

7. Authorizing the imposition upon a railway company of a penalty of \$5,000 per day for violating a lawful administrative order of the state Railroad Commission, as is done by Ga. Civ. Code, 1911, § 2667, does not deny the company the equal protection of the laws or due process of law, contrary to U. S. Const., 14th Amend., where, under § 2625 of the Georgia Code, the carrier has the right to a judicial review of the validity of such order by a suit against the Commission. *Wadley Southern R. Co. v. State* (U. S.) 106.

Impairment of contracts.

8. A city and a street railway company cannot so contract with each other as to prevent the state legislature from exercising its constitutional powers of taxation for the entire state. *Com. ex rel. Richmond v. Chesapeake & O. R. Co.* (Va.) 488.

9. Contract obligations are not impaired, within the inhibition of the Constitution, by the act of the Commission raising the rates of a public service corporation established by a valid contract with its customers, since the power to alter the charges so established is implied in the contract itself. *Re Rhinelander Power Co.* (Wis.) 652.

10. The Commission has power to order a public service corporation to establish a schedule of reasonable rates, although it has previously made valid contracts with consumers for lower rates. *Re Rhinelander Power Co.* (Wis.) 652.

CONSTRUCTION.

Issuance of securities to pay for, see *Security Issues*, 24, 25.

Of adopted statute, see *Statutes*, 3.

CONSUMER.

Ability of, to pay charges as affecting rates, see *Rates*, 13.

Special charges for consumers in arrears, see *Service*, 147.

Apportionment of costs, according to number of consumers, see *Apportionment*, 4.

Apportionment of cost of extension of gas mains between consumer and utility, see *Apportionment*, 9.

CONTINGENCIES.

Allowance for, in valuation, see *Valuation*, 33.

Allowance for, in return, see *Return*, 31, 32.

CONTRACTS.

Enforceability of territorial agreements between utilities, see *Inter-corporate Relations*, 1, 2.

Term of service for telephone contracts, see *Telephones*, 6.

Of telephone companies to be filed with Commission, see *Telephones*, 10, 13.

Validity of statutes impairing, see *Constitutional Law*, 8-10.

CONTRACTS—continued.

Jurisdiction of Commission to determine whether contracts are in restraint of trade, see Commissions, 10.

Policy of Commission to change contracts for rates made under prior law, see Rates, 6.

1. A rate contract entered into between a public utility and one of its customers does not violate public policy so as to render it void from the beginning, merely because the rates established thereby are unreasonably low. Re Rhinelander Power Co. (Wis.) 652.

2. A contract by which an electric utility agrees to supply a customer with a large portion of its product at excessively low rates will not be declared void on the theory that such rates are discriminatory as against other customers who must pay higher rates in order to insure a reasonable return, where the contract was entered into prior to April 1, 1907. Re Rhinelander Power Co. (Wis.) 652.

CONTRIBUTED PROPERTY.

Valuation of, see Valuation, 28.

Jurisdiction of Commission over acceptance of, see Commissions, 14.

CONTROL OF FIELD.

See Certificate of Public Convenience.

CONVENIENCE.

See Certificate of Public Convenience.

CORPORATION.

Sale of all corporate property as dissolution, see Consolidation, Merger and Sale, 3.

COST OF REPRODUCTION.

Definition of, see Valuation, 6, 7.

As theory of valuation, see Valuation, 8-13.

COSTS AND EXPENSES.

Allowance for various costs and expenses in valuation, see Valuation.

Apportionment of, see Apportionment, 4-8.

Cost to produce commodity as determinative of rate, see Return, 15.

Amortization of costs of bond issue, allowance for on return, see Return, 27-29.

COTTON.

Rates on, see Rates, 187, 188.

COUNTY.

Division of costs of constructing steel bridge over railroad, see Apportionment, 12.

COUPON BOOKS.

For street railways, see Rates, 159.

COURTS.

Remedy of telephone company injured by location of high tension wires, see Commissions, 7.

Effect of pendency of appeal in, upon Commission procedure, see Procedure, 3.

Remedy in courts to recover past due rentals, see Service, 146.

CREAM.

Discrimination in transportation of, see Service, 23, 24.

CROSSINGS.

Division of expense construction of joint interlocking device at, see Apportionment, 11.

Jurisdiction of Commission to determine necessity of, see Commissions, 12.

1. The Commission refused to order a railroad company to make and maintain a highway crossing over its tracks, in order to provide means for reaching certain industries without requiring travelers to go two additional blocks, where the amount of travel that would be accommodated was not known, where the benefit to those who would use the crossing would be slight, where the danger would be increased, and where the opening of the crossing would necessitate the removal of buildings and oil tanks on concrete foundations, for which there was no other location. *Scobey v. Great Northern R. Co.* (Mont.) 950.

Grade crossings.

2. The Commission will not in the exercise of its jurisdiction approve a grade crossing over an extensively traveled street of a city which protests against the granting thereof, unless the evidence in favor of such crossing is certain and convincing that the service, accommodation, and convenience of the public will be attained. In *Re Cornwall & L. R. Co.* (Pa.) 329.

3. A new highway laid out by a town to cross a railroad was ordered to cross at grade. *Remington v. Chicago, M. & St. P. R. Co.* (Wis.) 147.

4. A railroad company and county were ordered, on petition of the county, jointly to construct a railroad bridge over the tracks of the company to accommodate a new county road, and to eliminate a grade crossing. *Harnett County v. Atlantic Coast Line R. Co.* (N.C.) 635.

CURTAILMENT.

Of car service on street railway, see Service, 90-92.

Power of Commission to authorize curtailment of service, see Service, 4.

DAMAGES.

Claims for, in bills of lading, see Carriers, 2.

Allowance of amounts paid for accidents in return, see Return, 26.

DAMS.

See Water, 8-10.

DECLINING STEP PLAN.

Of electric rates, see Rates, 84.

DEFICIENCIES.

Issuance of securities to make up deficiency in sale of securities,
see Security Issues, 29, 30.

DELIVERY.

Of telephone message, charge for, see Rates, 137.

DEMAND UNIT.

Necessity of each consumer's payment, see Rates, 28.

DEMURRER.

See Pleadings, 1.

DEPOSIT.

To guarantee payment for service, see Service, 143.

DEPOTS.

Installation of telephone at, see Carriers, 3; Service, 117, 118.

Rates for telephones installed in, see Rates, 55.

Adequacy of depot service, see Service, 110-114.

DEPRECIATION.

1. The annual depreciation allowance for a gas plant should be sufficient to replace the main parts of the property when the same have deteriorated from causes other than operation, such as the mineral character of the soil in which mains are laid, and the character of the water used in boilers. *El Reno v. El Reno Gas & Electric Co.* (Okla.) 226.

2. The owners of fifty lots out of four hundred eighty for which a water system is constructed to supply cannot be called upon to pay the full amount which would ordinarily be allowed for depreciation if the system were fully utilized. *Re North Moneta Garden Lands Water Co.* (Cal.) 645.

3. Consideration must be given to scrap value in calculating the amount to be written off for wear and depreciation. *Re Oblong Gas Co.* (Ill.) 598.

4. The policy of distributing in dividends money properly applicable to depreciation and obsolescence may result in serious injury to the stockholders, inasmuch as the safety and growing worth of their investment lies chiefly in the potential value of a relatively low capitalization, taken in conjunction with the increased earning power of a reasonable surplus. *Re Lawrence Gas Co.* (Mass.) 814.

5. A gas company cannot maintain a price for gas which will indirectly cause its consumers to pay for the accrued depreciation and

DEPRECIATION—continued.

obsolescence of its plant, where it appears that under the prices which have prevailed the consumers have met all just obligations of this nature, but that the money properly applicable for such purposes has been paid out in dividends. *Re Lawrence Gas Co. (Mass.)* 814.

Necessity for reasonable allowance.

6. A reasonable allowance must be made for a depreciation annuity. *Coalinga v. Pleasant Valley Water Co. (Cal.)* 575.

7. A natural gas company should provide an annual allowance for depreciation. *Re Oblong Gas Co. (Ill.)* 598.

8. It is necessary and good business policy for a telephone company to set aside annually out of its earnings a reasonable percentage of the value of its plant to take care of the item of depreciation, in order to prevent a severe burden upon the investor as well as upon the public when the actual replacement of the plant becomes necessary. *Re Teleph. Co. (S. D.)* 1032.

Method of computing.

See, also, 10, 11, *infra*.

9. The Commission, in valuing the property of a waterworks company for rate purposes, allowed a depreciation annuity on the sinking fund basis. *Coalinga v. Pleasant Valley Water Co. (Cal.)* 575.

Amounts allowed.

10. The annual rate of depreciation of steam stations with extensive distribution systems is often 4.5 per cent, computed on the straight-line basis. *Re Rhinelander Power Co. (Wis.)* 652.

11. An annual allowance of 3 per cent on the sinking-fund basis should be a sufficient charge to the depreciation account for a well-built steam power plant. *Re Rhinelander Power Co. (Wis.)* 652.

12. A farm telephone company, on an application for an increase in rates, was ordered to set aside a sum amounting approximately to 20 per cent of its gross earnings for current maintenance and depreciation replacements. *Re Lynch Teleph. Co. (Neb.)* 64.

13. A light, heat, and power company was ordered to set aside annually out of operating income 7 per cent upon an authorized issue of stock as a maintenance and depreciation fund. *Re Arlington Light, Heat, & P. Co. (Neb.)* 547.

14. In an investigation of gas rates, an allowance of the minimum rate of 4 per cent annually for depreciation for purposes of computation is not to be considered a determination by the Commission of the proper rate. *El Reno v. El Reno Gas & Electric Co. (Okla.)* 226.

15. Provision for interest and depreciation amounting to about 14 per cent of the cost new of a telephone property was allowed by the Commission as reasonable in a rate investigation without definitely fixing the fair value of the property, in view of the apparently excellent condition of the telephone system. *In Re Clark County Teleph. Co. (Wis.)* 359.

16. An allowance for depreciation of 7 per cent of the cost of reproduction of telephone rural party lines was made by the Commission

DEPRECIATION—continued.

in computing the reasonable expenses to be charged against such lines in a valuation for rate purposes. *Re Dakota Cent. Teleph. Co. (S. D.) 562.*

17. Annual depreciation on a hydraulic-power plant was computed by the Commission at 2.5 per cent for the purpose of comparing operating expenses at such a plant with those of a hypothetical steam plant in order to calculate the saving due to the operation of the water plant. *Re Rhinelander Power Co. (Wis.) 652.*

18. Telephone companies were ordered to establish a just and reasonable schedule of yearly rental rates sufficiently high to pay all legitimate operating and maintenance charges, and set aside not less than 6 per cent, nor more than 8 per cent, of the value of their properties to take care of depreciation. *Re Teleph. Co. (S. D.) 1032.*

Allowance of accrued depreciation in valuation.

19. Accrued depreciation will not be disregarded in the valuation of a waterworks property for municipal purchase, on the theory that the plant will constitute a continuous property to be kept up from year to year by expenditures for maintenance. *In Re Janesville Water Co. (Wis.) 178.*

20. In estimating the cost of reproduction for the purpose of obtaining the fair value of a waterworks property for municipal purchase, depreciation of pumps to 50 per cent of condition new on a basis of a 40 year life, which included some allowance for obsolescence, was held not to be too great where the pumps had been used for some time. *In Re Janesville Water Co. (Wis.) 178.*

21. In estimating the cost of reproduction for the purpose of obtaining the fair value of a waterworks property for municipal purchase, allowance of a condition of 50 per cent new of a Sturdevant fan and engine which was secondhand at the time of installation, and which had been in use for eleven years, was held to be ample. *In Re Janesville Water Co. (Wis.) 178.*

22. The Commission placed a present value of \$8,000 upon a waterworks company's reservoir, the cost of reproduction of which was estimated by the Commission's engineers at \$9,787, the present value at \$6,753, based partly upon obsolescence due to deterioration of ground waters by open storage, the Commission, in fixing such valuation, taking into consideration the facts that the reservoir valued was not likely to become inadequate, and that it was of an uneconomical type which could be replaced by modern reservoir for about the same amount as would be required to reproduce the existing reservoir. *In Re Janesville Water Co. (Wis.) 178.*

23. In estimating the accrued depreciation of mains of sizes smaller than 4 inches, for the purpose of determining the fair value of a waterworks property for municipal purchase, the depreciation was placed at 50 per cent of condition new, based on an estimated average life of between thirty and forty years. *In Re Janesville Water Co. (Wis.) 178.*

24. The depreciated condition of 4-inch cast-iron water mains was placed at 90 per cent of value new in a valuation of the waterworks property for municipal purchase, it appearing that the life of such mains is between fifty and one hundred years, and that the depreciated

DEPRECIATION—continued.

condition on an estimated life of one hundred years would be 97 per cent or 98 per cent, and 85 per cent on a life of fifty years, the Commission having also given consideration to the fact that there was no immediate prospect of the distribution system of the company becoming inadequate. In *Re Janesville Water Co.* (Wis.) 178.

DESTRUCTION.

Authorization of destruction of records, see *Records*, 2, 3.

DIRECTORY.

Liability of telephone company for errors in, see *Telephones*, 23.

Listing in, as service by telephone company, see *Service*, 58-60.

DISCONNECTION.

Of electric service, see *Service*, 36, 37.

Of telephone, charge for, see *Rates*, 133, 134.

DISCONTINUANCE.

Of service, for refusal to pay for, see *Service*, 139-141.

Of electric service, see *Service*, 36, 37.

DISCOUNT.

Allowance of discount on bonds in valuation, see *Valuation*, 37.

Amortization of bond discount, allowance of, in return, see *Return*, 27-29.

In case of advance payment, see *Service*, 126, 127.

For prompt payment for service, see *Service*, 130-133.

DISCRIMINATION.

In rates, see *Rates*, 26-55, 117-124, 165-179.

In service, see *Service*, 22-24.

Validity of statute forbidding, see *Constitutional Law*, 3.

DISSOLUTION.

Sale of all corporate assets, as dissolution of corporation, see *Consolidation, Merger and Sale*, 3.

DITCHES.

Maintenance of private ditches by irrigation company, see *Service*, 30.

DIVERSITY FACTOR.

As feature of rate for electricity, see *Rates*, 62.

DIVIDENDS.

Considering ability to pay in permitting issue of securities, see *Security Issues*, 38.

See also *Return*.

DIVISION OF COSTS.

See Apportionment, 9-13.

DOCK.

Jurisdiction of Commission on private, see Commissions, 13.

Right of public to use private dock of railroad, see Railroads, 4.

DOING TELEPHONE BUSINESS.

What constitutes, see Telephones, 15, 16.

See also Mutual Telephone Companies.

DONATED PROPERTY.

Jurisdiction of Commission over acceptance of, see Commissions, 14.

Valuation of, see Valuation, 28.

DUE PROCESS OF LAW.

See Constitutional Law.

DUNNAGE.

As discrimination, see Rates, 178.

1. Dunnage consists of the material used by shippers to brace, stay, support, or protect in transit, goods shipped in bulk, not including barrels, boxes, crates, or other containers, nor materials, such as ice or stoves, used for the protection of perishable goods. Re Trans-Missouri Freight Bureau (Neb.) 67.

EARLY LOSSES.

Allowance for, see Valuation, 51-62.

EARNINGS.

See also Return.

Apportionment of, see Apportionment.

Of physical connection of telephones, apportionment of, see Apportionment, 14.

Capitalization of, see Valuation, 25.

EARTH.

Suspension of railroad service because of earth slides, see Service, 116.

EFFICIENCY.

Liberal dividends as reward for, see Return, 18, 19.

ELECTRIC GENERATOR.

Valuation of, see Valuation, 69.

ELECTRICITY.

Apportionment of costs of service, see Apportionment.

Jurisdiction and functions of commissions as to, see Commissions.

ELECTRICITY—continued.

Power of Commission where local authorities have not surrendered power over utilities, see Rates, 8.

Consolidation and merger of, see Consolidation, Merger and Sale.

Grant of certificate of public convenience to electric company, see Certificate of Public Convenience.

Duty of electric company to furnish low rate for power, see Rates, 76.

For depreciation of electric plants, see Depreciation, 13.

For rates of electric plants, see Rates, 62-103.

Return to which company is entitled, see Return.

For security issues by electric companies, see Security Issues.

For service of electric plant, see Service, generally; and particularly, 31-41.

Extension of service for, see Service, 13-15.

For valuation of electric plant, see Valuation.

Acquisition of plant by municipality, see Municipalities, 1.

Electric company as a public utility, see Public Utilities, 3.

Records of company, see Records, 1.

1. In order to arrive at a condition under which the service rendered by a hydraulic-power plant furnishing its product subject to the vicissitudes of the water supply would be equal to that which a hypothetical steam plant operating continuously could furnish, it is necessary to assume a situation in which the former would be assisted by an auxiliary plant of some kind. *Re Rhinelander Power Co. (Wis.)* 652.

Grant of franchise.

2. The Iowa Commission has jurisdiction to grant a franchise to build, construct, reconstruct, equip, maintain, and operate a transmission line for the purpose of conducting electricity for light, heat, and power. *Maier v. Jackson & Clinton Counties (Iowa)* 450.

3. A franchise for the period of twenty-five years was granted to the Grinnell Electric & Heating Company to build and operate an electric transmission line between Grinnell, Poweshiek county, and Kellogg, Jasper county, Iowa, such line to be constructed in accordance with approved standards and in compliance with the Iowa statutes. *Grinnell Electric & Heating Co. v. Poweshiek & Jasper Counties (Iowa)* 933.

4. A franchise was granted to an individual to build, construct, reconstruct, equip, maintain, and operate a transmission line for the purpose of conducting electricity for light, heat, and power, subject to the conditions that it should not interfere with the use of public highways or private lands, and that it be constructed and operated in accordance with approved standards in order to secure safety and efficiency in operation. *Maier v. Jackson & Clinton Counties (Iowa)* 450.

ELECTRIC LIGHT.

See Electricity.

EMERGENCY.

Telephone service at night, see Service, 77.

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EMINENT DOMAIN.

Carriage of freight by street car, as additional servitude, see Constitutional Law, 4.

1. An individual applicant for a franchise to construct and operate a transmission line was ordered to have authority and be possessed of the right of eminent domain. *Maier v. Jackson & Clinton Counties* (Iowa) 450.

EMPLOYEES.

Free or reduced rates to, see Rates, 43.

ENFORCEMENT.

Of payment for service, see Service, 145-148.

ENGINEERING.

Allowance of expense for, in valuation, see Valuation, 31.

ENGINEERS.

Consideration to be given to estimates of, in valuation, see Valuation, 26, 27.

EQUAL PROTECTION OF LAW.

See Constitutional Law.

EQUIPMENT.

Inspection of, on subscriber's premises, see Telephones, 8.

Free or reduced rates to owners of, see Rates, 50-53.

Not in use, valuation of, see Valuation, 41.

Removal of telephone, charge for, see Rates, 127.

Injuries to.

1. The rule of a telephone company that if the telephone instrument or its connections are maliciously or purposely injured the subscriber must pay for the damage was approved. *Re Lafayette Teleph. Co.* (Ind.) 930.

2. A rule of a telephone company that the subscriber must pay for all careless breakage of material at his station was approved. *In Re Clark County Teleph. Co.* (Wis.) 359.

ERROR.

See Appeal and Review.

ESTIMATES.

Of engineers, consideration to be given to valuation, see Valuation, 26, 27.

ESTOPPEL.

1. An ordinance will not be held invalid on the ground that it was granted to an illegally incorporated company, where the company itself is asserting the illegality of its own incorporation to escape certain of its obligations under the ordinance. *Glen Rock v. Bergen Aqueduct Co.* (N. J.) 937.

EVIDENCE.**Presumptions.**

1. A rate voluntarily established by a public utility must be regarded as *prima facie* reasonable. *Home Teleph. & Teleg. Co. v. Pacific Teleph. & Teleg. Co.* (Cal.) 687.

2. The same presumption of reasonableness attaches to rates established by a state Commission as to rates voluntarily established and maintained by carriers. *Re Southern P. Co.* (Cal.) 850.

3. A 5 cent street railway fare complained of, which has not only been in force for many years, but which agrees with a maximum rate of fare long prescribed by the legislature, is presumed to be reasonable. *Re Rochester* (N.Y.) 1095.

Burden of proof.

4. A substantial increase in the general office and management expenses of a public-service corporation throws the burden of justifying such increase upon the company. *Re Northampton Gas Petition* (Mass.) 618.

5. A railroad company does not sustain the burden of proving that a rate on a certain commodity between designated points in one state is unreasonably low, by comparing the car mile earnings on such commodity in relation to the car mile earnings on all commodities with the relative car mile earnings on the same commodity for a single distance in another state. *Re Southern P. Co.* (Cal.) 850.

Materiality.

6. Evidence that other persons in a community are enjoying the use of business telephone service at residence telephone rates in nowise enters into the determination of whether a telephone instrument installed in a veterinary surgeon's residence should take a business or a residence telephone rate. *Centerville Teleph. Co. v. Sheppard* (S. D.) 512.

Sufficiency.

7. Evidence that a carrier had voluntarily established comparatively low special rates on distillery supplies, and had maintained them for many years after the cessation of the reason assigned for originally introducing them, *viz.*, the encouragement of the distillery business along the carrier's line, and had then withdrawn them, not upon the ground that they were inadequate, but because they gave rise to discrimination, and in so doing had introduced much higher rates, is sufficient to support an order of the state Railway Commission re-establishing such special rates as the maximum intrastate freight rates on such articles. *Louisville & N. R. Co. v. Finn* (U. S.) 121.

EXCAVATION.

Cost of rock excavation, see *Valuation*, 21.

EXCHANGE LIMITS.

Of telephone, see *Service*, 61-63.

EXCURSION TRAINS.

Jurisdiction of Commission over excursion trains, see *Service*, 6.

EXPERIMENT STATIONS.

Free or reduced rates to, see Rates, 38.

EXPLOSIVES.

Charge for storage of, see Rates, 185.

EXPRESS COMPANIES.

Accounting for, see Accounting.

For rates of express companies, see Rates, 197-199.

EXTENSION OF SERVICE.

See Service, 8-20.

EXTENSION SETS.

Of telephone, charge for, see Rates, 138.

EXTRAVAGANCE.

Effect of extravagant operating expenses on return, see Return, 21, 22.

FAIR VALUE.

See Valuation.

FANS.

Depreciation of, see Depreciation, 21.

FEDERAL REGULATION.

Of commerce, see Commerce.

FILING.

Of telephone reports and records, see Telephones, 9-13.

FINANCING.

See Security Issues.

FINES AND PENALTIES.

Unconstitutionality of excessive penalty, see Constitutional Law, 5-7.

For failure to make payments promptly, see Service, 134-141.

1. The Commission will not be inclined to deal lightly with even slight infractions of the public utilities act. Re Southern Counties Gas Co. (Cal.) 741.

2. A railroad company was fined for violating an order of the Commission providing that shipments of the character in question should move 50 miles per day until reaching destination, allowing twelve hours at junction or divisional points and exempting legal holidays and Sundays, where it appeared that after allowing for relay and legal holidays, it took four days to handle the shipment a distance of 35 miles. Terrell v. St. Louis & S. F. R. Co. (Okla.) 486.

3. A penalty attaches for the failure of telephone companies to

FINES AND PENALTIES—*continued*.

make reports to the Commission in conformity with the rules and regulations prescribed by the Commission. Re Teleph. Co. (S. D.) 1032.

4. A power and light company was ordered to refrain from soliciting or contracting for electrical energy for commercial cooking and power purposes in excess of 15 horse power of connected load until such time as its schedules of rates were duly filed with the Commission; it appearing that such company had failed to comply with a former order requiring the filing of rates, and was therefore in default; that its present schedules applied to only a portion of the service rendered; and that no schedules had been filed for certain towns in which service was offered. Great Shoshone & T. F. Water Power Co. v. Idaho Power & Light Co. (Idaho) 998.

FIRE.

Water rates, for fire purposes, see Rates, 111.

FIREMEN.

Free transportation to, see Rates, 42.

FISCAL YEAR.

See Accounting.

FLAGMAN.

Location of flagman for protection of rear of train, see Service, 96.

FLAT RATES.

For electricity, see Rates, 83.

FLOATING INDEBTEDNESS.

Issuance of securities to pay for, see Security Issues, 28.

FLOWAGE.

Prescriptive right to, see Water, 1.

FOREIGN.

Foreign attachments on telephones, see Telephones, 7.

FOREST PRODUCTS.

Railroad rates on, see Rates, 17.

FRANCHISES.

Applicant's right of eminent domain, see Eminent Domain.

Valuation of, see Valuation, 63, 64.

Of telephone companies to be filed with Commission, see Telephones, 8.

Of street railways as to carriage of freight, see Street Railways, 4, 5.

Of water company, see Water, 3-7.

FRANCHISES—continued.

Grant of franchise to electric company, see Electricity, 2-4.

Estoppel of corporation to deny its own incorporation, see Estoppel, 1.

1. The franchise or right of a public utility to do business is a property right in Wisconsin, contingent upon and inseparable from the ownership of the physical property of the company. *Neenah v. Wisconsin Traction, Light, Heat & P. Co. (Wis.)* 372.

FRATERNAL SOCIETIES.

Telephone rates for, see Rates, 34.

FREE SERVICE.

As discrimination, see Rates, 33-55.

FREEZING.

Duty of water company as to freezing of pipes, see Service, 25.

FREIGHT.

Reparation of excessive charges for, see Reparation, 1-5.

Carriage by, of street cars as additional servitude, see Constitutional Law, 4.

Carriage of, by street railways, see Street Railways, 4-6.

FRUIT.

Rates on, see Rates, 186.

FUNDS.

For depreciation, see Depreciation.

GAS.

Apportionment of costs of service, see Apportionment.

For depreciation of gas plant, see Depreciation, 1, 4, 5, 14.

For rates of gas plant, see Rates, 56-57b.

Return to which gas company is entitled, see Return.

For security issues by gas company, see Security Issues.

For valuation of gas plant, see Valuation.

Extension of service, see Service, 10-15.

See also Natural Gas.

GENERATOR.

Valuation of electric, see Valuation, 69.

GOING VALUE.

Allowance of, in valuation, see Valuation, 51-62.

GOOD SAMARITAN HOME.

Reduced gas rates to, see Rates, 37.

GRADE CROSSING.

See Crossings.

GRADES.

For stopping of interurban cars on steep grades, see Service, 94.

GROG.

1. Grog is a name applied to refractory materials such as pulverized brick, pottery, or fire clay, and, like clay, used in the manufacture of fire brick. *Carnegie Brick & Pottery Co. v. Western P. R. Co.* (Cal.) 1079.

GROUP.

Change of rate forming part of, see Rates, 2.

GUARANTY.

For payment of service, see Service, 142-144.

HAUL.

Higher charge for shorter haul as discrimination, see Rates, 168.

Shipment over two railroads as single, see Intercompany Relations, 4.

HEATING.

Jurisdiction of Commission over heating of street cars, see Service, 3.

Electric rates for, see Rates, 71.

By electricity, see Service, 38.

Of street cars, see Service, 86, 87.

HIGH SEAS.

Power of state to regulate commerce on, see Commerce, 6.

HIGHWAYS.

Jurisdiction of Commission over obstructions on, see Street Railways, 2.

Jurisdiction of Commission to compel electric railway company to pay local assessment, see Street Railways, 1.

Crossings over, see Crossings.

Division of costs of maintaining highway over, see Apportionment, 12, 13.

HORSE CAR COMPANY.

For security issues by horse car companies, see Security Issues, 40.

HOURS OF SERVICE.

See Service, 75-77.

HOURS OF USE.

Electric rate as dependent upon, see Rates, 75, 77.

HYDRANTS.

Water rates for, see Rates, 19.

HYDRAULIC POWER PLANT.

Depreciation of, see Depreciation, 17.

See also Electricity, 1.

ICE.

Rates for reicing cars, see Rates, 170, 183, 184.

ILLEGALITY.

Effect of issuance of securities without permission of Commission,
see Security Issues, 5-8.

IMPAIRMENT OF CONTRACTS.

See Constitutional Law, 8-10.

INCOME.

See Return.

INCREASED USE.

As affecting rates, see Rates, 22-25.

INDEBTEDNESS.

Issuance of securities to pay for floating indebtedness, see Security
Issues, 28.

INDIVIDUAL.

Grant of power of eminent domain to, see Eminent Domain, 1.

Grant of franchise to, see Electricity, 4.

Sale of railroad by, to corporation, see Consolidation, Merger and
Sale, 7.

INDUSTRIAL SWITCHING.

1. The term "industrial switching" as used by the Maryland Commission in order No. 75, May 31, 1912, embraces all carload movements within a switching district laid off by the legislature or by a duly empowered commission, whether such carload movements involve the changing of the point of delivery for a car coming into the district from the outside, or a strictly local intra-city movement. In *Re Northern C. R. Co.* (Md.) 154.

INJURIES.

To telephone equipment rule requiring subscriber to pay for, see
Equipment, 1, 2.

INSPECTION.

Of telephone equipment on premises of subscriber, see Telephones, 8

INSTALLATION.

Electric rate as dependent upon size of, see Rates, 75.

Of telephone, charge for, see Rates, 127.

INSURANCE.

Allowance for, in valuation, see Valuation, 34.

INTANGIBLE PROPERTY.

Valuation of, see Value, 51-57.

INTERCORPORATE RELATIONS.

Apportionment of cost of joint enterprise between utilities, see Apportionment, 10, 11.

1. A telephone company will not be compelled to discontinue its connections to certain consumers on the ground that it is violating a territorial agreement made with another telephone company by serving such consumers, where it appears that the latter company cannot, without deviating from its present rates, fulfil its own part of such agreement in regard to service to such consumers, and where it does not appear that any violation of the utilities act with reference to construction of new lines or extensions of existing lines has occurred. *Hughson Teleph. Co. v. Pacific Teleph. & Teleg. Co. (Cal.)* 867.

2. Consumers receiving exchange service under contract with one telephone company will not be required to accept in lieu thereof less desirable exchange service with another company on the grounds that the former company has assigned the territory in which their telephones are located and the latter company has agreed to carry out all unexpired contracts within such territory, where it appears that their contracts were entered into prior to the Commission's jurisdiction and prior to the territorial agreement in question, and where it appears that the latter telephone company cannot, without deviating from its present rates, fulfil its agreement so far as service to such consumers is concerned. *Hughson Teleph. Co. v. Pacific Teleph. & Teleg. Co. (Cal.)* 867.

3. A telephone company furnishing toll-service connections to complainant, a small telephone company having no exchange, was ordered to furnish to the latter's subscribers monthly statements showing the amounts due from each subscriber for toll messages, the number of toll messages from each subscriber, and from nonsubscribers, with their names, stations called, date, etc., and to furnish to the agent of complainant a duplicate copy of each of such statements with a sheet having a detailed summary thereof, in order to lessen the expense and time of such agent in the collection of toll charges for messages originating on complainant's lines, it appearing that complainant was under considerable expense in classifying and dividing toll charges among its subscribers and rendering statements to them, and that an allowance to complainant by respondent for the collection of toll charges or for other services to subscribers, different from respondent's published tariffs, was unwarranted. *Norwich Teleph. Co. v. Bell Teleph. Co. (Pa.)* 941.

4. Two railroads cannot be said to constitute in effect but one line so as to make a shipment over both essentially a single haul, although some of the officers of one company are also the officers of the other, where it appears that the companies are separate and distinct legal entities, controlled by separate boards of directors. *Hodges Bros. v. St. Louis & S. F. R. Co. (Kan.)* 1008.

INTERCORPORATE RELATIONS—*continued.***Purchase or exchange of service.**

5. Connecting telephone companies were ordered to discontinue paying a flat rate of so much per year or per month for switching rural lines, and to enter into contracts for that service based on the statutory rate of not to exceed 25 cents per month per phone, for the reason that where the compensation for such service is fixed on a flat-rate basis, it is impossible to determine whether such compensation is not more than the maximum allowed by law. *Re Teleph. Co. (S. D.) 1032.*

6. Connecting telephone companies were ordered to discontinue paying a long-distance telephone company on a flat-rate basis of so much per year or per month for originating and terminating toll messages, and to enter into contracts for such service based on the statutory terminal charge of 5 cents per message, for the reason that where compensation for such service is fixed on a flat-rate basis it is impossible to determine whether such compensation is not more than the maximum allowed by law. *Re Teleph. Co. (S. D.) 1032.*

7. A rural telephone company or the owner of a rural telephone line is responsible to the exchange company for the amount of all toll messages and switching fees that may accrue to the subscribers of such company or line, for the reason that any other arrangement would place an undue burden upon the exchange company by requiring it to make collections from individuals over whom it has no control, and for the further reason that the rural company or line is in a position to refuse service to its subscribers unless bills are paid. *Re Teleph. Co. (S. D.) 1032.*

8. A contract between two telephone companies providing for joint exchange and toll service upon payment of \$5 per year per subscriber by complainant company, without any allowance for its services in collecting and paying over toll charges for messages originating on its lines, was not held to be unreasonable or discriminatory merely because similar contracts existed with other telephone companies providing for the payment of \$3 per year per subscriber with a 15 per cent allowance on all toll charges collected on their lines, where it appeared that such contracts were to expire within a year, and that upon expiration were to be superseded by contracts similar in terms and conditions to the contract complained of. *Norwich Teleph. Co. v. Bell Teleph. Co. (Pa.) 941.*

9. A complainant telephone company having a monopoly of the telephone service in a certain locality was authorized to publish proper and reasonable tariffs to cover the expense of collecting from nonsubscribers toll charges originating on its lines, it appearing that such non-subscriber toll business formed a large part of the toll business originating on complainant's lines, and that complainant was under a collection expense approximating 15 per cent of the amounts collected for toll business; it appearing, further, that an allowance to complainant by respondent for the collection of toll charges, different from the published tariffs of respondent, was unwarranted. *Norwich Teleph. Co. v. Bell Teleph. Co. (Pa.) 941.*

INTEREST.

During construction, allowance for, in valuation, see Valuation, 35.

INTERLOCKING DEVICE.

Division of cost of, see Apportionment, 11.

INTERSTATE COMMERCE.

See Commerce.

INTERSTATE COMMERCE COMMISSION.

Accounting methods of, see Accounting.

Block system of express rates adopted, see Rates, 197, 198.

INTERSTATE RATES.

Difference between interstate and intrastate, as discriminations, see Rates, 170, 171.

INTERURBAN RAILROAD.

For rates of interurban railways, see Rates, 160.

For security issues by interurban railways, see Security Issues.

For service of interurban railways, see Service, generally; and particularly, 93, 94.

Failure to stop trains at village as discrimination, see Service, 22.

INTERVENTION.

In proceedings, see Procedure, 2, 3.

INTRASTATE RATES.

Difference between interstate and intrastate as discrimination, see Rates, 171.

INVESTMENT.

Return on, see Return.

IRRIGATION.

For service of irrigation, see Service, 30.

1. An irrigation company will not be ordered to take control of a private irrigation ditch and its branches, and to operate and maintain the same, unless it is properly compensated by the landowners benefited thereby. *Porter v. Fresno Canal & Irrig. Co.* (Cal.) 695.

JOINT ENTERPRISE.

Apportionment in case of, see Apportionment, 9-14.

JURISDICTION.

Of Commissions, see Commissions.

KILOWATT HOUR.

Rate for electricity, see Rates, 65.

LAND.

Enhanced value of, as affecting rates, see Rates, 12.

Charge for service as lien upon, see Service, 145.

LAND—continued.

Valuation of, see Valuation, 45-48.

Jurisdiction of Commission to require facilities for interchange of traffic between land and water carriers, see Service, 2.

Lease of, see Leases.

LARGE CONSUMER.

Natural gas rates for, see Rates, 60.

LAWFUL OBLIGATIONS.

Refunding of, as purpose of security issues, see Security Issues.

LEASES.

1. A telephone company was authorized, under a conference ruling, to make leases of such portions of its real property as were not necessary or useful in performance of its public duties, such leases to be for terms not exceeding five years and for such rentals as will constitute a reasonable return under all the circumstances. Re Chicago Teleph. Co. (Ill.) 596.

2. A telephone company was ordered to insert provisions in its leases of its real property not used and useful in its public duties, to the effect that such leases were subject to termination on short notice whenever in the lessor's opinion the property shall have become necessary or useful in its public business, and that they shall be terminated whenever in the opinion of the Commission the public convenience and necessity so require. Re Chicago Teleph. Co. (Ill.) 596.

LEGAL.

Allowance of legal expenses in valuation, see Valuation, 32.

LEGISLATURE.

Power of, in respect to change of situs of rolling stock for purposes of taxation, see Taxation, 1-5.

LEVELS.

To be maintained at dam, see Water, 2.

LIBRARY.

Telephone rates for, see Rates, 34.

Reduced light and water rates to, see Rates, 36.

LICENSE.

Effect of license to public to use private dock of railroad, see Railroads, 4.

LIGHTNING ARRESTERS.

See Service, 39-41.

LIMESTONE.

Rates on, see Rates, 195, 196.

LIMITATION OF ACTIONS.

1. A statute requiring complaint as to overcharges for transportation to be made within two years from the time of exaction, does not apply where the petitioner, by letter and notice, has brought his claim to the attention of the Commission within the limit prescribed by law. *Nordberg Mfg. Co. v. Chicago, M. & St. P. R. Co.* (Wis.) 839.

LOAD BASIS.

Of electric rates, see Rates, 86-92.

LOCAL ASSESSMENT.

Compelling street railway company to pay, see Street Railway, 1.

LOCAL AUTHORITIES.

Power of Commission where control over public utilities has not been surrendered by, see Rates, 7-9.

LOCATION.

Of railroads, see Railroads, 1.

LOGGING RAILROAD.

As common carrier, see Service, 106.

MAINS AND PIPES.

Depreciation of, see Depreciation, 23, 24.

Extension of, see Service, 10-15.

Consideration of pavement over, in valuation, see Valuation, 38, 39.

MANAGEMENT.

Reward for efficiency in, see Return, 18, 19.

MARKET.

For commodity as affecting rates, see Rates, 13.

Rates for electricity as dependent upon, see Rates, 69.

MARKET VALUE.

See Valuation.

MARL.

Rates on, see Rates, 195.

MATERIALITY.

Of evidence, see Evidence, 6.

MAXIMUM CHARGE.

For electricity, see Rates, 102.

MAZDA LAMPS.

Rates for, see Rates, 101.

MECHANICS INSTITUTE.

Reduced light and water rates to, see Rates, 36.

MELONS.

Rates on, see Rates, 186.

MERGER.

See Consolidation, Merger and Sale.

MESSAGE.

Charge for delivery of telephone, see Rates, 137.

METER RENTAL.

For electric service, see Rates, 93, 94.

METERS.

Electric service to be metered, see Rates, 78.

Rates on prepayment gas meters, see Rates, 57a, 57b.

Charges for removing and replacing water meters, see Rates, 110.

METHOD.

Of computing depreciation, see Depreciation, 9-11.

MILEAGE.

Basis of apportionment, see Apportionment.

MILK.

Discrimination in transportation of, see Service, 23, 24.

MINIMUM CHARGE.

For electric lighting, reasonableness of, see Rates, 31.

For electric rates, see Rates, 80-82.

Fixed electricity, see Rates, 95, 98-100, 103.

For electricity for X-ray machines, see Rates, 73, 103.

For natural gas, see Rates, 61.

MISSIONS.

Reduced light and water rates to, see Rates, 36.

MONEY.

Transfer of, by telephone, see Service, 57.

MONOPOLY AND COMPETITION.

See also Certificate of Public Convenience.

Power of Commission to equalize competitive conditions by adjusting rates, see Rates, 4.

MORTGAGE.

See Security Issues.

MOTORS.

Electric rates for small, see Rates, 71, 72.

MOVING PICTURES.

Electric rates for, see Rates, 74.

MUNICIPALITIES.

Free telephone service to, see Rates, 40.

Policy of Commission to change contracts for rates made by municipality under prior law, see Rates, 6.

Grant of certificate of public convenience to, see Certificate of Public Convenience, 2, 6.

Advantages of regulation over municipal ownership, see Consolidation, Merger, and Sale, 6.

Ordinances of requiring approval of Commissions, see Commissions, 8, 9.

1. A city cannot acquire the business of an electric light and power company by having all of the current supplied to customers of the company therein delivered to it at wholesale in order to pass on such advantage to the individual customers by giving them the benefit of the wholesale price, without acquiring and paying for all of the property of the company used and useful for carrying on such business, including the going-concern value and physical property. *Neenah v. Wisconsin Traction, Light, Heat, & P. Co. (Wis.)* 372.

2. A previous order prescribing the terms upon which the property of a water company was to be taken over by a city was modified pursuant to stipulation between the parties, so as to require payment for the property to be made at the date of transfer instead of six months thereafter, and so as to permit partial payment to be made by the assumption of the bonds outstanding against the company. *Re Janesville Water Co. (Wis.)* 1047.

Remedies of, against utilities.

3. The public utility law of Wisconsin provides three remedies for municipalities dealing with public-utility corporations; viz. (1) election to purchase; (2) application for a certificate of necessity and convenience to permit competition, and (3) application for an order prescribing reasonable rates. *Neenah v. Wisconsin Traction, Light, Heat, & P. Co. (Wis.)* 372.

MUTUAL TELEPHONE COMPANIES.

1. The Michigan Railroad Commission has jurisdiction over telephone companies doing business upon a mutual or so-called free service basis, under a statute extending jurisdiction over all persons operating telephone lines or exchanges doing a telephone business within the state. *Reading Cent. Teleph. Co. v. Fayette Rural Teleph. Co. (Mich.)* 56.

NATURAL GAS.

For rates of natural gas plants, see Rates, 58-61.

For depreciation of natural gas plant, see Depreciation, 7.

NECESSITY.

See Certificate of Public Convenience.

NIGHT.

Emergency telephone service in, see Service, 77.

NONSUBSCRIBERS.

To telephone, charges to, see Rates, 140-142.

NOTES.

See Security Issues.

NOTICE.

Of disconnection of gas and electric service, see Service, 37.

Of shutting off water, see Service, 26, 29.

Of removal of telephone, see Telephones, 26.

NUISANCE.

Maintenance of dam without franchise, see Water, 9.

NUMBER.

Of telephones, see Telephones, 17.

OBLIGATIONS.

Issuance of securities to recommend, see Security Issues, 14-23.

OFFICE RENT.

Allowance of in return, see Return, 23.

OFFICERS.

Free and reduced telephone rates to, see Rates, 41.

Allowance of salaries of, in going value, see Valuation, 53.

OPERATING EXPENSES.

Allowance of, in return, see Return, 20-26.

OPERATOR.

Salary of telephone, as part of operating expense, see Return, 23.

OPPOSITE DIRECTION.

Higher charge for as discrimination, see Rates, 167.

OPTIONAL RATES.

For electricity, see Rates, 79.

ORDERS.

Penalty for violation of orders of Commissions, see Fines and Penalties, 2-4.

Modification of, see Municipalities, 2.

ORDERS—continued.**Effect and conclusiveness of.**

1. The Commission's approval of the agreed purchase price of the property of a public-service corporation is not a finding of the value of such property, nor is it an acquiescence in the values placed upon the property by the companies, nor an approval of the consideration stipulated. *Re Citizens' Light & P. Co. (Ohio)* 510.

2. The Commission's approval of the agreed purchase price of the property of a public-service corporation is not a finding that existing rates are reasonable, and not discriminatory. *Re Citizens' Light & P. Co. (Ohio)* 510.

3. The authority of the Commission for the issuance of preferred capital stock of a telephone company is not to be construed as an approval by the Commission of the rates now charged for service at any of its stations, nor as a finding by the Commission, that such rates are reasonable or not excessive or not discriminatory. *Re United Teleph. Co. (Ohio)* 557.

4. The authority of the Commission for the issuance of preferred capital stock of a telephone company is not to be considered as a finding by the Commission of the value of the property for the capitalization of the purchase price for which a portion of such preferred capital stock is authorized to be issued, either as to the whole of said property, or of any part thereof, nor as an acquiescence in the values placed upon said property by the parties, nor as an approval of the consideration stipulated. *Re United Teleph. Co. (Ohio)* 557.

5. The authority number issued to carriers by the Commission upon the filing of their rates indicates simply that the tariff has been regularly filed and has become a part of the records of the Commission, but it is no evidence of the reasonableness of such rates. *Parlin & O. Co. v. St. Louis, I. M. & S. R. Co. (La.)* 460.

ORDINANCES.

Of telephone companies to be filed with Commission, see *Telephones*, 8.

Requiring approval of Commission, see *Commissions*, 8, 9.

ORGANIZATION.

Allowance of expenses for, in valuation, see *Valuation*, 32, 36.

ORIGINAL COST.

Definition of, see *Valuation*, 5.

OUTPUT EXPENSES.

See *Apportionment*, 6.

OVERHEAD EXPENSES.

Issuance of securities to pay for, see *Security Issues*, 27.

Allowance of, in valuation, see *Valuation*, 29-36.

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OWNERS.

Of equipment, reduced rates to, see Rates, 50-53.

PACKAGE TICKETS.

For street railway, see Rates, 157, 158.

PARTIES.**Bringing in new parties.**

1. The complainant in a proceeding to compel physical connection between telephone lines was, on motion to dismiss the complaint for lack of jurisdiction over necessary parties, given leave to bring in such parties either by joining them, by their consent, as parties complainant, or, in case of their refusal so to join, by making them parties respondent. *West v. Missouri & K. Teleph. Co. (Kan.)* 208.

PASSENGERS.

Seats for on street cars, see Service, 85.

Seats for, on steam railroad, see Service, 109.

Train service for, see Service, 100-109.

PATRONAGE.

Increase in, as affecting rates, see Rates, 22-25.

PAVING.

Jurisdiction of Commission over street paving, see *Street Railways*, 1.

PAVING OVER MAINS.

Consideration of, in valuation, see Valuation, 38, 39.

PAYMENT.

For service, see Service, 119-148.

PAY STATIONS.

For telephones, see Service, 64, 65.

PENALTIES.

See Fines and Penalties.

PERIOD.

For rendering bills for service, see Service, 119.

PHILADELPHIA MOONLIGHT SCHEDULE.

Adopted, see Rates, 101.

PHYSICAL CONNECTION.

Requirement of, see Service, 54-56.

Toll charges upon compulsory physical connection of telephones, see Rates, 113.

PHYSICAL CONNECTION—*continued*.

Of telephones, apportionment of expense between utilities, see Apportionment, 10.

Apportionment of earnings of physical connection between telephones, see Apportionment, 14.

PIPES.

See Mains and Pipes.

PLEADING.

1. A demurrer is not a proper pleading to file to a complaint or petition before the Kansas Commission. *West v. Missouri & K. Teleph. Co.* (Kan.) 208.

Amendment.

2. A pending complaint may be amended during the hearing, upon agreement of counsel of both parties interested, so as to have a matter germane to the proceeding brought to the attention of the Commission, in the form of a proper petition, the respondent to the complaint becoming the petitioner. *Slate Belt Teleph. & Teleg. Co. v. Blue Mountain Teleph. & Teleg. Co.* (Pa.) 757.

PLEDGE.

Effect of illegal pledge of security issues, see Security Issues, 6, 7.

Of securities as issuance, see Security Issues, 8.

POULTRY FOOD.

Rates on, see Rates, 171, 175-177.

POWER.

Duty of electric company to furnish low rate for, see Rates, 76.

Return to which power company is entitled, see Return.

PREFERRED STOCK.

Effect of granting authority to issue, see Orders, 3, 4.

PREFIX.

Of telephones, see Telephones, 17, 18.

PREPAYMENT.

Gas meters for, see Rates, 57a, 57b.

Conclusiveness of decision of state court ordering discontinuance of requirement of, see Appeal and Review.

PRESCRIPTION.

Prescriptive right of flowage, see Water, 1.

PRESENT NEEDS.

Valuation of construction in advance of, see Valuation, 43, 44.

PRESUMPTIONS.

See Evidence, 1-3.

PRICE.

Sale price of securities fixed, see Security Issues, 46-56.

PRIOR LAW.

Validity of contracts entered into under, see Contracts, 2.

Policy of Commission as to contracts of rates made under, see Rates, 6.

PRIVATE BRANCH EXCHANGE.

Telephone rates for, see Rates, 125, 126.

PROCEDURE.

1. The electric rates fixed by the Commission to be charged by a company in complainant city were also made to apply to an adjoining town, where a stipulation to this effect was entered into at the hearing. *Monterey v. Coast Valleys Gas & Electric Co. (Cal.)* 725.

2. A preliminary objection to the appearance of an intervener on the grounds that complainant had not been served with a copy of the plea is not serious where the plea was not filed until after the hearing, ample opportunity having been given to file briefs, and the parties having notified the Commission subsequent to the hearing that they did not desire to introduce further testimony. *Wisconsin Veterans' Home v. Waupaca Electric Light & R. Co. (Wis.)* 251.

3. An application to vacate an order of the Commission, and suspend the effective date thereof, and to be allowed to intervene in the cause, will be dismissed on motion, where an appeal from the order has been prosecuted to the common pleas court and the cause is pending in the supreme court. *New York Coal Co. v. Hocking Valley R. Co. (Ohio)* 552.

PROMISSORY NOTES.

See Security Issues.

PROMPT PAYMENT.

For service, see Service, 128-141.

PROPERTY.

Franchise as, see Franchise, 1.

Issuance of securities to pay for acquisition of, see Security Issues, 26.

PROPERTY NOT IN USE.

Valuation of, see Valuation, 41-44.

Lease of, see Leases.

PROPORTION.

Of bonds to stock, see Security Issues, 45.

PUBLIC.

Right of, to use private dock of railroad, see Railroads, 4.

PUBLIC CALLING.

1. The business of a telephone company or association operating upon a mutual basis is affected with a public interest. *Reading Cent. Teleph. Co. v. Fayette Rural Teleph. Co.* (Mich.) 56.

PUBLIC CONVENIENCE AND NECESSITY.

See Certificate of Public Convenience.

PUBLIC INSTITUTIONS.

Free or reduced rates to, see Rates, 33-37.

PUBLIC LIBRARY.

Telephone rates for, see Rates, 34.

PUBLIC POLICY.

Contracts for unreasonably low rates, as violative of, see Contracts, 1.

PUBLIC SERVICE COMMISSIONS.

See Commissions.

PUBLIC UTILITIES.

Jurisdiction of Commissions over, see Commissions.

Remedies of municipalities against, see Municipalities, 3.

See also Gas; Natural Gas; Electricity; Water; Irrigation; Telephones; Street Railways; Interurban Railways; Railroads; Express Companies; Telegraphs.

See also Depreciation; Intercorporate Relations; Rates; Security Issues; Service; Valuation.

1. The Wisconsin state policy with reference to public utilities has shifted so as to place more emphasis on the adjustment of rates than on the introduction of competition. *Neenah v. Wisconsin Traction, Light, Heat, & P. Co.* (Wis.) 372.

What are.

2. A corporation authorized to carry on the business of a water company in all its branches for the supplying of certain lands and the occupants thereof with water for domestic uses or both is not a mutual water company, but a public utility, where only a portion of its stock is made appurtenant to the land, and the control of the company is vested in outside parties. *Re North Moneta Garden Lands Water Co.* (Cal.) 645.

3. A corporation which, among other things, is authorized by charter to manufacture electric power and to convey it where it may be desired for use, and which uses the public streets of a municipality by virtue of a franchise, is a public utility, although by far the greater part of its product goes to a purely private concern. *Re Rhinelander Power Co.* (Wis.) 652.

PUMPING.

Rates for electricity, see Rates, 70.

PUMPS.

Depreciation of, see Depreciation, 20.

PURCHASE.

By municipality, see Municipalities.

Of utility as remedy of municipality, see Municipalities, 3.

PURPOSE.

Of security issues, see Security Issues, 9-35.

QUARTERLY BASIS.

For use of water in excess of minimum allowance, see Rates, 105.

RAILROAD COMMISSIONS.

See Commissions.

RAILROADS.

Accounting for, see Accounting.

Interstate commerce by, see Commerce.

Constitutionality of statutes affecting, see Constitutional Law.

Crossings over, see Crossings.

Sale of, see Consolidation, Merger and Sale, 7.

Logging road as carrier, see Service, 106.

Discrimination in service on, see Service, 24.

Jurisdiction of Commission over excursion trains on railroads, see Service, 6.

Shipment over two lines of, as single haul, see Intercompany Relations, 4.

Rates for telephones installed in depots, see Rates, 55.

Apportionment of earnings of, see Apportionment, 2, 3.

Division of costs of construction and maintenance of crossings, see Apportionment, 12, 13.

Division of costs of joint interlocking device, see Apportionment, 11.

Reparation of excessive charges, see Reparation, 1-5.

Industrial switching, see Industrial Switching.

For rates of railroads, see Rates, 161-196.

Return to which railroad company is entitled, see Return.

For service of railroads, see Service, generally; and particularly, 95-118.

For security issues by railroads, see Security Issues.

Fines imposed on, see Fines and Penalties, 2.

For valuation of railroads, see Valuation.

Interurban railroad, see Interurban Railroads.

Street railroads, see Street Railway.

Situs of rolling stock for purpose of taxation, see Taxation.

RAILROADS—*continued*.

1. The location of a portion of a railroad was approved, it appearing that the company had in all respects complied with the law and that the new railroad, except at the point of beginning, would not approach the line of the objecting company nearer than 15 miles, and that it would not run in the same general direction. *In Re Eastern Maine R. Co. (Me.)* 211.

2. The expense necessitated by the installation of a safety device at a more than ordinarily dangerous railway crossing is not a justification for subjecting travelers using the crossing in the course of their daily occupation to such unusual danger, although the traffic is not heavy. *Wheaton v. Minneapolis, St. P. & S. Ste. M. R. Co. (Wis.)* 332.

3. The property of a railroad company not devoted to the purpose of giving the service that it holds itself out as offering is essentially private in character and subject to its own control. *Ashland v. Minneapolis, St. P. & S. Ste. M. R. Co. (Wis.)* 519.

4. A railroad company will not be required to permit the continued use of its terminal dock for purposes other than giving the public access to its railroad facilities, simply because the public had theretofore been allowed the use of the dock as a licensee. *Ashland v. Minneapolis, St. P. & S. Ste. M. R. Co. (Wis.)* 519.

RATES.

I. Jurisdiction and powers of Commission.

II. Factors to be considered in determining reasonableness.

III. Discrimination.

IV. Of particular utilities.

Schedule of rates of telephone companies to be filed with Commission, see *Telephones*, 11.

Action of Commission in other proceedings as determinative of reasonableness of rates, see *Orders*.

Cost to produce commodity as determinative of rate, see *Return*, 15.

Rate of return to which utility is entitled, see *Return*.

Presumption of reasonableness of, see *Evidence*, 1-3.

I. Jurisdiction and powers of Commission.

1. It is the Commission's duty to require that published and filed tariffs be corrected to conform to its rules and orders, when its attention is called by the filing of a complaint to a violation of such rules and orders. *Parlin & O. Co. v. St. Louis, I. M. & S. R. Co. (La.)* 460.

2. The Commission will be careful not to reduce as excessive or unreasonable rates that are parts of group systems of rates, where such rates do not operate to do injustice to any point or to any shipper. *Mason-Donaldson Lumber Co. v. Chicago & N. W. R. Co. (Wis.)* 149.

3. A statute establishing a 5 cent maximum fare for street railroads does not prevent the Commission from fixing a lower rate, where the maximum statutory charge is unreasonable or unjust. *Re Rochester (N. Y.)* 1095.

4. The Commission is not empowered to equalize competitive conditions by adjusting transportation rates, in the absence of a showing

RATES—continued.

that the conditions surrounding the service in each case are similar. *Carnegie Brick & Pottery Co. v. Western P. R. Co. (Cal.) 1079.*

5. The Commission has no jurisdiction over a complaint by one telephone company as to the reasonableness of the rates charged by a competitor, either under § 60 or § 62 of the public utilities act,—especially where the complaining company is not a patron of the other. *Home Teleph. & Teleg. Co. v. Pacific Teleph. & Teleg. Co. (Cal.) 687.*

Prior law.

6. It is not the general policy of the Illinois Public Utilities Commission to inquire, of its own initiative, into the reasonableness of a contract for service between municipalities and telephone companies, entered into prior to the taking effect of the act creating the Commission. *Re Tampico Farmers Mut. Teleph. Co. (Ill.) 24.*

Surrender of power by local authorities.

7. The Commission has no jurisdiction to fix the rates of a telephone company within a city which has not voted to confer upon the Commission its powers over public utilities. *Home Teleph. & Teleg. Co. v. Pacific Teleph. & Teleg. Co. (Cal.) 687.*

8. The Commission has no jurisdiction over discriminatory rates of a telephone company in a city which has not surrendered its power over public utilities, since the only relief to be afforded would be an order raising or lowering the rates, and this the Commission has no power to make; and the fact that a small portion of the lines of the company extend outside of the city is immaterial. *Home Teleph. & Teleg. Co. v. Pacific Teleph. & Teleg. Co. (Cal.) 687.*

9. The electric rates to be charged by a company in an incorporated town may be fixed by the Commission, where the town has turned over its control of public utilities to the Commission at an election. *Monte-rey v. Coast Valleys Gas & Electric Co. (Cal.) 725.*

II. Factors to be considered in determining reasonableness.

Of return, see Return, 11-17.

10. The Commission, in forming its opinion as to whether a challenged rate is unreasonable, may take into consideration all matters necessary to that determination in each particular case as presented by the evidence, although some of such matters must also be considered in a case where the Commission has the further duty of fixing a lower rate to be charged as a maximum in the future. *Re Rochester (N. Y.) 1095.*

11. Railroad rates for service rendered between points on a branch line, the operation of which is surrounded by peculiar conditions, should be adjusted with regard to those conditions. *Carnegie Brick & Pottery Co. v. Western P. R. Co. (Cal.) 1079.*

Increased value of real estate.

12. The reasonableness of the rates of a water company must be determined independently of the question whether losses of the principal owners of the company have been recouped from the resulting enhancement of the value of other real estate owned by them. *Re Reynolds (Conn.) 892.*

RATES—continued.**Limitations of market.**

13. The establishment of a schedule of public service rates sufficient to yield a reasonable return on the investment, regardless of the marketability of the supply, is a delicate and difficult task, and should be limited by a reasonable maximum based upon the facts of the particular case. *Re Rhinelander Power Co.* (Wis.) 652.

Comparison of rates.

14. The fact that other companies charge rates as high or higher than those complained of is of little weight upon the question of reasonableness, unless the conditions are analogous. *Re Reynolds* (Conn.) 892.

15. The mere fact that a former commodity railroad rate was lower than the present charge is not a sufficient ground for declaring the existing rate unreasonable. *Hodges Bros. v. St. Louis & S. F. R. Co.* (Kan.) 1008.

16. A comparison of the rates of one railroad with those of another railroad, or with other rates of the same railroad, for transporting identical commodities for similar or greater distances, is not controlling evidence that the rates complained of are unreasonable, unjust, or excessive, where it appears that they apply to a service rendered between points on a branch line operated under peculiar conditions. *Carnegie Brick & Pottery Co. v. Western P. R. Co.* (Cal.) 1079.

17. The Commission refused to reduce the rates of a railroad on forest products, where it appeared that such rates were not excessive as compared with rates on other lines operating under practically the same conditions, and where its business was carried on at a loss. *Horning v. Big Falls R. Co.* (Wis.) 826.

Ability of consumer to pay.

18. Upon a proposal to increase water rates, consideration was given to evidence that the inhabitants of the community to be served were mostly manual laborers earning small salaries, who could not afford to take water at the advanced rates. *Potee v. Brooklyn & C. B. Light & Water Co.* (Md.) 42.

Readiness to serve.

19. In fixing the rates to be charged for fire hydrants for cities, consideration must be taken of the fact that the size of main and water facilities must at all times be kept adequate for fire purposes in order to be ready when the demand comes. *Corona v. Corona City Water Co.* (Cal.) 782.

20. In determining a proper rate schedule, consideration should be given to the fact that an electric plant must always have a certain amount of equipment ready to serve a consumer, and that the larger the consumer, the more equipment is necessary. *Re Ladysmith Lighting Co.* (Wis.) 1050.

Increased use.

21. Upon a proposal to increase water rates, consideration was given to the possibility that with a proper rate a considerably larger number of consumers might be obtained than that which the company had taken

RATES—*continued.*

as the basis of its estimates. *Potter v. Brooklyn & C. B. Light & Water Co.* (Md.) 42.

22. Two connecting railroads were ordered to substitute a reduced joint rate schedule, for the joint rates in force between certain points on their lines, on the ground that the rates in effect seemed higher than the character and volume of business called for, in view of the fact that the greater expansion which would follow a moderate reduction would benefit the carriers as well as the communities. *John H. Allen Seed Co. v. Chicago & N. W. R. Co.* (Wis.) 352.

23. A railroad was ordered to substitute a local rate schedule for the local rates charged between shipping and receiving points on its line, on the ground that the rates in effect seemed higher than the character and volume of business called for, in view of the fact that the greater expansion which would follow a moderate reduction would benefit the carriers as well as the communities. *John H. Allen Seed Co. v. Chicago & N. W. R. Co.* (Wis.) 352.

24. A reduction of the rates of a water company will not be ordered in the absence of proof of their present unreasonableness, on the mere possibility that an increase in patronage will render them unreasonable in the future. *Re Reynolds* (Conn.) 892.

25. The Commission is not justified in ordering a reduction of fares of a street railway company from 5 cents to 3 cents during rush hours, on the speculation that an assumed reduction in revenue resulting therefrom amounting to 20 per cent of the present yearly revenue from operation, and to 2 per cent on the agreed valuation, would be made up by an increase in traffic, owing to lower fares. *Re Rochester* (N. Y.) 1095.

III. Discrimination.

Power of Commission as to discriminatory rate, see *supra*, 8.

As to discrimination peculiar to telephone rates, see *infra*, 117-124.

As to discrimination peculiar to railroad rates, see *infra*, 165-179.

When contract as to rates void as discriminatory, see *Contracts*, 2. Discrimination in service, see *Service*, 22-24.

26. The value of a telephone company's property, its earnings and expenses, and the adequacy of its service, need not be considered in connection with an application to abolish discriminatory rates. In *Re Tri-County Teleph. Co.* (Ill.) 129.

27. A telephone company has no right to charge subscribers in one locality unreasonably low rates, and to recoup losses resulting therefrom, by charging subscribers in other localities unreasonably high rates. *Home Teleph. & Teleg. Co. v. Pacific Teleph. & Teleg. Co.* (Cal.) 687.

28. In order to avoid discrimination each customer of a gas company should pay at least the amount of expenses of the company per annum which are proportionate to the number of customers, and in addition thereto each customer, including the customer who has the smallest meter in use, should pay the amount of the demand unit, in order to bear his share of the fixed expenses. In *Re Wildwood, A. & H. B. Gas Co.* (N. J.) 342.

29. It is discriminatory for a telephone company to grant free inter-

RATES—*continued.*

change of service to one telephone company and require another telephone company to pay a charge therefor. *Re* Teleph. Co. (S. D.) 1032.

30. Authority was granted to a telephone company to change and increase certain of its rates and charges for the purpose of eliminating discriminations and establishing a uniform schedule of rates where the evidence for the company tended to show that the rates sought to be established were reasonable and no objection was made by patrons or municipal authorities to the proposed changes. *Re* Commercial Teleph. & Teleg. Co. (Ill.) 34.

31. Minimum charges for electric lighting, varying from nothing to \$25 a consumer a month, are unjustly discriminatory and in violation of § 68 of the Missouri public service law. *Meek v. Consumers E. L. & P. Co.* (Mo.) 956.

32. A general schedule of rates for "contract gas" for commercial uses to large consumers, based on a sliding scale, classified according to the quantity used, such schedule to be open to all consumers in a similar class without discrimination, was ordered to be substituted for a schedule providing for special prices to large consumers, and requiring the filing with the Commission of a special schedule to cover each particular case, effective upon the written authority of the Commission. *Re* Ob-long Gas Co. (Ill.) 598.

Free or reduced service to particular consumers — Charitable institutions.

See also *infra*, 39.

33. A rule of a telephone company that in order to obtain the rate allowed charitable and public institutions, the applicant must occupy the entire premises and use the service exclusively for the purpose intended, and furnish a written guaranty to that effect when required, it being understood that no joint-user rate will be allowed on this class of service, was approved. In *Re* Clark County Teleph. Co. (Wis.) 359.

34. A rule of a telephone company that charitable institutions, public and parochial schools, armory, public library, churches, and fraternal societies shall be classed as and carry rates and privileges of individual line residences, except as to joint-user privileges, was approved. In *Re* Clark County Teleph. Co. (Wis.) 359.

35. A railroad company was authorized to give free transportation and reduced rates transportation to the employees and inmates of certain benevolent and charitable organizations, under the Maine public utility statute, in view of the fact that the kind of transportation requested had theretofore been granted, and that plans had been made by parties affected, anticipating that there would be no change. In *Re* Maine C. R. Co. (Me.) 135.

36. A light and water company was allowed to grant reduced rates to certain churches, chapels, missions, libraries, and a mechanics institute under provision of the utilities act permitting reduced rates for charitable and benevolent purposes. *Re* Rumford Falls Light & Water Co. (Me.) 616.

37. A gas company was authorized to grant reduced rates to the Good Samaritan Home at Bangor, on the ground that it is a benevolent

RATES—continued.

and charitable organization under the public utility statute. In *Re Bangor Gaslight Co.* (Me.) 134.

— Experiment stations.

38. Free transportation to members of the staff of the Maine Agricultural Experiment Station cannot be granted, on the ground that the institution is established under state and Federal laws, and is supported by state and Federal aid, since the Maine public utility law prohibits the granting thereof; the proviso in said law that it shall not be construed to prohibit free transportation as defined by the interstate commerce act not being applicable. In *Re Maine C. R. Co.* (Me.) 135.

— Schools.

See also *supra*, 34.

39. Reduced rates cannot be granted to public schools under the Maine utilities act which allows reduced rates for charitable and benevolent purposes. *Re Rumford Falls Light & Water Co.* (Me.) 616.

— Municipalities.

40. Under a prior ruling of the Commission, that franchise provisions for the furnishing of free service to a municipality shall be observed by the public utility until otherwise ordered, and that the right to disregard such franchise provisions in any consideration and determination of the utility's rates and charges shall be reserved, free telephone service to the city was ordered discontinued. *Re Abingdon Home Teleph. Co.* (Ill.) 29.

— Public officers.

41. All free and reduced rate telephone service to public officers, and officers in the various municipalities, is forbidden by conference ruling No. 13 of the Illinois Public Utilities Commission. *Re Tampico Farmers Mut. Teleph. Co.* (Ill.) 24.

— Firemen.

42. The laws of Indiana prohibit the issuing of free transportation to members of a fire department merely because they are such. *Re Fire Dept.* (Ind.) 538.

— Employees.

43. The employees of a public service corporation should be on the same footing as the public as to prices for gas purchased. *Re Lawrence Gas Co.* (Mass.) 814.

— Stockholders.

44. Telephone companies were ordered to discontinue the practice of charging and collecting assessments for the payment of telephone service, it appearing that certain nonstockholding subscribers were being charged a monthly or yearly rental rate, while stockholding subscribers were being permitted to pay a yearly assessment at the end of the year. *Re Teleph. Co.* (S. D.) 1032.

45. Telephone companies were required to discontinue the practice of charging a different rate to stockholding subscribers from that charged nonstockholding subscribers. *Re Teleph. Co.* (S. D.) 1032.

46. The furnishing of electricity free to the stockholders of an elec-

RATES—continued.

trick company, or to any other consumer, constitutes unjust discrimination. *Meek v. Consumers E. L. & P. Co. (Mo.) 956.*

47. An increase in telephone rates will be allowed, to eliminate discrimination in favor of stockholders. *Re Montrose Mut. Teleph. Co. (Ill.) 33.*

48. An increase in telephone rates will be allowed, to eliminate discrimination in favor of stockholders, such discrimination being forbidden by conference ruling No. 8, of the Illinois Public Utilities Commission. *Re Tampico Farmers Mut. Teleph. Co. (Ill.) 24.*

49. A telephone company was authorized to change certain rates to eliminate discrimination in favor of stockholders, under a conference ruling forbidding that a stockholder cannot be given any greater or less or different rate than the rate charged other subscribers. In *Re Tri-County Teleph. Co. (Ill.) 129.*

— Owners of appliances.

50. It is unlawful for a telephone company to grant any reduction from the regular rate on account of subscribers owning their own instruments. (Conference Ruling No. 15, Illinois Public Utilities Commission.) *Re Bluffs & W. Teleph. Co. (Ill.) 928.*

51. A telephone company was authorized to increase certain rates in order to eliminate discrimination in favor of subscribers owning their own instruments. *Re Bluffs & W. Teleph. Co. (Ill.) 928.*

52. An increase in telephone rates will be allowed, to eliminate discrimination in favor of the owners of telephones, such discrimination being forbidden by conference ruling No. 15 of the Illinois Public Utilities Commission, which fixes an annual rental of \$160 to be paid by the company to such owners. *Re Tampico Farmers Mut. Teleph. Co. (Ill.) 24.*

53. A telephone company was authorized to change certain rates to eliminate discrimination in favor of subscribers owning their telephones, under a conference ruling forbidding any reduction from the regular rate on account of subscribers owning their own telephones. In *Re Tri-County Teleph. Co. (Ill.) 129.*

— Railroads installing telephones.

54. Where telephone service in railway stations may be reasonably required under the provision of section 49 of the Illinois Public Utilities Law, railway companies should pay the regular business rate for such service. *Re Tampico Farmers Mut. Teleph. Co. (Ill.) 24.*

55. Telephone companies were ordered to discontinue the practice of maintaining and operating free telephones in railroad depots and to charge railroad companies for service at the same rate and under the same terms and conditions as apply to other business phones. *Re Teleph. Co. (S. D.) 1032.*

IV. Of particular utilities.**Gas.**

Discrimination in rates, see *supra*, 28, 32, 37, 43.

56. Rates for gas were reduced from \$1.10 to \$1 per thousand cubic feet, where it appeared that operating expenses were unreasonably high and that such rates would yield sufficient operating expenses, including

RATES—continued.

depreciation and a fair return upon the value of the property which the company was actually and necessarily employing for the public convenience, and where it further appeared that the capacity of the present plant would take care of a very considerable increase in output without any substantial increase in investment, although, on a reproductive method of valuation alone, the company might have been entitled to increase its rates. Re Northampton Gas Petition (Mass.) 618 and 1109.

57. A gas company which was not in position to pay any dividends on its stock, but which had been able to pay interest on its bonds, was allowed to establish a minimum charge of 75 cents per month applicable whenever the premises are occupied, upon ample notice from the consumer. In Re Wildwood, A. & H. B. Gas Co. (N. J.) 342.

— Prepayment meters.

57a. A gas company is entitled, on account of the greater cost of installation and maintenance, to make a reasonable additional charge for gas sold through prepayment meters, put in only at the request of its customers, over the rate for gas sold through standard credit meters. Re Western United Gas & Electric Co. (Ill.) 1086.

57b. A gas company was authorized to charge \$1 per thousand cubic feet for gas sold through prepayment meters, where the rate for gas measured through standard credit meters was 90 cents per thousand feet. Re Western United Gas & Electric Co. (Ill.) 1086.

Natural gas.

58. A natural gas company was allowed to put into effect a schedule of increased rates, where it appeared that returns from the existing charges were insufficient to yield a fair return, and that committees of citizens appointed by the mayors and common councils of the two cities affected had agreed to the proposed schedules, and that the mayor and common council of one of the cities and the citizens' committee of the other had requested the establishment of such schedule. Re Indiana Gas-light Co. (Ind.) 37.

59. An increase in rates for natural gas for domestic and gas engine use was allowed in a certain service zone, for the purpose of conserving the supply, especially during cold-weather periods when the supply is limited, by preventing reckless and extravagant use already threatening the existence of the business and the interests of the citizens dependent thereon; it appearing that the increase was reasonable, that a *pro rata* increase in the gross earnings would not result, and that the revenue of the company would not be greatly curtailed by the lessened demand, that the investment of the stockholders would be temporarily protected, and that a similar increase in rates in another zone had conserved the supply and made the load more even, thus affording better service at less cost. Re Oblong Gas Co. (Ill.) 598.

60. A classified schedule of natural-gas rates for commercial uses to large consumers was ordered to become effective when approved by the Commission, subject to the qualification that the anticipated demand that would thus be created should not be so great as to endanger the supply of gas to domestic consumers. Re Oblong Gas Co. (Ill.) 598.

61. A natural-gas rate schedule was approved, containing a minimum

RATES—continued.

charge of 50 cents for each calendar month or part thereof. *Re O'Long Gas. Co. (Ill.)* 598.

Electricity.

Power of Commission as to, see *supra*, 9.

Factors to be considered in determining reasonableness, see *supra*, 20.

Discrimination in rates, see *supra*, 31, 36, 46.

62. The most important feature of electric utility rate making is the diversity factor. *Neenah v. Wisconsin Traction, Light, Heat & P. Co. (Wis.)* 372.

63. A rate which makes a charge for the demand at the consumer's premises is not designed for the accumulation of demands at a single substation. *Neenah v. Wisconsin Traction, Light, Heat & P. Co. (Wis.)* 372.

64. The output feature of a rate schedule designed so as to permit of cumulative billing is an unfair basis for determining the wholesale rate at a substation, where the total or whole of the consumer's demands is larger than the demand at the substation. *Neenah v. Wisconsin Traction, Light, Heat & P. Co. (Wis.)* 372.

65. A straight kilowatt hour rate provides an equitable return only in the case of one specific rate of consumption. *Re Ladysmith Lighting Co. (Wis.)* 1050.

66. A gas and electric company was directed to place in effect for the cities of Monterey and Pacific Grove the schedule of electric rates established in a former proceeding for the city of Salinas, where it appeared that the entire valuation, operating expense, depreciation, and income of the company had been considered in such proceeding, and that the rates established for Salinas were equally applicable to Monterey and Pacific Grove. *Monterey v. Coast Valleys Gas & Electric Co. (Cal.)* 725.

67. It is unnecessary to provide separate schedules of rates for different classes of residence and business lighting consumers, where the present consumers are all lighting consumers, since one schedule of block rates will be sufficient for the two classes, with separate provisions for minimum monthly bills for residence lighting and business lighting. *Meek v. Consumers E. L. & P. Co. (Mo.)* 956.

68. Merely because an electric light and power company has two rates on file one of which gives a lower per unit charge for certain classes of business than does the other, the assumption is not warranted that either rate is reasonable for all classes of business, since the reasonableness of any rate for any class of service must be tested according to the principles laid down by the Commission, the most vital of which are that the utility shall receive an adequate return upon its property, and the consumer shall receive service at a reasonable price. *Neenah v. Wisconsin Traction, Light, Heat, & P. Co. (Wis.)* 372.

69. A power company which showed that its gross income was only 5.3 per cent on the cost new and 2.8 per cent on the value of the physical property plus an allowance for water-power rights, working capital, and going value, but which did not demonstrate the marketability of its

RATES—continued.

product at higher rates, was authorized, through negotiations with its customers, to make a new schedule of charges not to exceed a maximum specified by the Commission. *Re Rhinelander Power Co. (Wis.) 652.*

— Particular kind of service.

70. The cost of electric pumping operation becomes directly proportional to the amount of work performed, and practically ceases the moment the motor is stopped. *Re Ladysmith Lighting Co. (Wis.) 1050.*

71. An electric lighting and power company was ordered to amend its rates so as to permit domestic heating appliances and small motors not exceeding two kilowatt total connected load to be used as a part of the installation under its regular business or residence lighting rates, it appearing that the company's schedules for power rates had formerly been applied to current consumed by such small motors and heating appliances, which schedules were based upon the maximum demand of the consumer with a minimum charge of \$1 per kilowatt of maximum demand, but provided that no minimum charge of less than \$2 would be considered. *Hubbard Creamery Co. v. Molalla Electric Co. (Or.) 324.*

72. A lighting rate for electricity may be successfully applied to those consumers who have small motors connected to their lighting circuits. *Re Ladysmith Lighting Co. (Wis.) 1050.*

73. A special rate classification, including a minimum charge, should be made for the use of electricity for an X-ray machine. *Butler v. Tucson Gas, E. L. & P. Co. (Ariz.) 572.*

74. Service and power rates were ordered to include electric energy utilized for motive and miscellaneous lighting service, such as current for stereopticons, moving-picture machines, photographer's arts and rectifiers, when separately metered from lighting. *Re Ladysmith Lighting Co. (Wis.) 1050.*

75. An electric lighting company was ordered to discontinue its present schedule of rates and to substitute therefor a schedule for commercial lighting based upon a primary, secondary, and excess rate, dependent upon the size of installation and hours of use, the service to include electric energy furnished for appliances other than lighting equipment, when the accurate rated capacity of such appliances did not exceed 2 K. W. *Re Ladysmith Lighting Co. (Wis.) 1050.*

76. A rate for electric lighting being prohibitive to anyone desiring to use a considerable amount of current for power purposes, as low a rate for power as is consistent with operating conditions should be established, since it is the duty of a company to extend its service to reach as many consumers as possible. *Re Ladysmith Lighting Co. (Wis.) 1050.*

— Period of use.

See also 75 *supra*.

77. Electric rates should be so designed that the number of hours a day a consumer uses his installation, whether for a long or a short period, will determine whether he shall receive a relatively low rate or not. *Re Ladysmith Lighting Co. (Wis.) 1050.*

RATES—*continued.*

— **Service metered.**

78. Electric lighting rates for all consumers with at least 100 watts connected were ordered metered. *Re Ladysmith Lighting Co. (Wis.)* 1050.

— **Optional rates.**

79. An electric power rate schedule was approved which granted the consumer the option of combining power of less than 3 horse power and lighting at lighting rates, or of requiring separate power and lighting meters at the rates applicable thereto. *Monterey v. Coast Valleys Gas & Electric Co. (Cal.)* 725.

— **Effect of minimum charge.**

See also *supra*, 73; *infra*, 95, 98-100, 103.

80. The capacity charge per horse power was ordered to constitute a minimum charge for large electric motors. *Re Ladysmith Lighting Co. (Wis.)* 1050.

81. The minimum charge covers certain items in the operating expenses of electric plants which bear little or no relation to the current sold, such as the expense of reading and maintaining meters, delivering bills, and carrying customers' accounts; and when no minimum charge is made, the rates are therefore in a sense discriminatory. *Re Ladysmith Lighting Co. (Wis.)* 1050.

82. A reasonable minimum monthly bill for electric lighting to consumers who use little or no current in any one month is justifiable, and such charge should be based on the average cost of serving, the consumers paying the minimum bill. *Meek v. Consumers E. L. & P. Co. (Mo.)* 956.

— **Flat rate basis.**

83. The amount to be paid under a system of flat rates depends almost wholly upon the fixtures, and not upon the amount of current used; and while an estimate can generally be made of the amount of current a certain group of lamps will consume, this estimate cannot be determined as accurately as is considered necessary in arriving at equitable rates. *Re Ladysmith Lighting Co. (Wis.)* 1050.

— **Declining step plan.**

84. A declining step plan of electric rates for increasing consumption is objectionable for the reason that it requires adjustment. *Meek v. Consumers E. L. & P. Co. (Mo.)* 956.

— **Sliding scale.**

For gas, see *supra*, 32.

85. The Commission held that the maximum prices to be charged by an electric light and power company, in order to be nonpreferential, should be fixed upon a sliding scale, with maximum prices for the various amounts of electricity furnished to consumers thereunder, without disturbing existing flat rates and street-lighting rates. *Meek v. Consumers E. L. & P. Co. (Mo.)* 956.

— **Load basis.**

86. A hydro-electric system depends so much on the full utilization P.U.R. 15A.—74.

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of water in order to secure economical operation that a pumping load may be desirable and worth taking on even at a moderate rate. Re Ladysmith Lighting Co. (Wis.) 1050.

87. In a schedule of rates based partly on the active load, the Commission ordered incidental power appliances, such as flatirons, toasters, fans, etc., to the amount of 1,000 watts rating, not to be considered in determining such load. Re Ladysmith Lighting Co. (Wis.) 1050.

88. In a schedule of electric lighting rates for residences, dwellings, flats, and private houses, based partly upon the active load, it was held that 60 per cent of the total connected load should be taken as active where the total connected load was equal to or less than 500 watts nominal rated capacity, and 33½ per cent of the total connected lighting load over and above 500 watts should be taken as active where the installation exceeded 500 watts nominal rated capacity. Re Ladysmith Lighting Co. (Wis.) 1050.

89. In a schedule of electric lighting rates for stores, offices, business and professional places, private halls, passenger depots, theaters, etc., based partly on the active load, 70 per cent of the total connected load was ordered to be taken as active where the total connected load was equal to or less than 2½ kilowatts nominal rated capacity, and 55 per cent of the total connected load over and above 2½ kilowatts to be taken as active where the installation exceeded 2½ kilowatts nominal rated capacity. Re Ladysmith Lighting Co. (Wis.) 1050.

90. In a schedule of electric lighting rates for county and city buildings, schools, factories, industrial establishments, shops, stables, garages, and warehouses, based partly upon the active load, 55 per cent of the total connected load was ordered to be taken as active. Re Ladysmith Lighting Co. (Wis.) 1050.

91. The fact that electric current to operate a city's pumping station can be supplied off peak should entitle the city to as low a rate as is consistent with operating conditions. Re Ladysmith Lighting Co. (Wis.) 1050.

92. Ninety per cent of the first H. P. of nominal rated capacity, of motor installed as indicated on the manufacturer's name plate, 70 per cent of the next 20 H. P., 50 per cent of the next 30 H. P., and 40 per cent of all over 60 H. P., were ordered to be taken as active H. P. for the purpose of fixing power charges based partly upon the active load. Re Ladysmith Lighting Co. (Wis.) 1050.

— Meter rental.

93. A charge of an electric company for meter rent is unreasonable and unlawful, where the meters have been included as part of the investment of the company on which it is entitled to a return, since this would amount to a double return upon this item of investment. *Meek v. Consumers E. L. & P. Co.* (Mo.) 956.

94. A meter rental was abolished as being of doubtful legality. Re Ladysmith Lighting Co. (Wis.) 1050.

— Particular rates fixed.

95. A minimum charge of \$1 per month for incandescent commercial

RATES—*continued*.

lighting was fixed by the Commission. *Re Ladysmith Lighting Co.* (Wis.) 1050.

96. The Commission ordered the adoption of a tentative electric power rate of 50 cents per month per horse power of nominal rated capacity plus 4 per cent net, or 5 per cent gross, per kilowatt hour of energy consumed. *Re Ladysmith Lighting Co.* (Wis.) 1050.

97. A tentative rate of $2\frac{1}{2}$ cents per kilowatt hour, for the use of 68,000 kilowatt hours per year, off peak, for pumping water, was held equitable both to a waterworks and to the electric utility, where it necessitated no additional purchase of equipment. *Re Ladysmith Lighting Co.* (Wis.) 1050.

98. A minimum monthly charge of \$100 for electric pumping was held equitable where the rate was $2\frac{1}{2}$ cents per kilowatt hour, based on an assumed use of 68,000 kilowatt hours per year. *Re Ladysmith Lighting Co.* (Wis.) 1050.

99. A minimum monthly charge of \$1.25 for small electric motors was ordered by the Commission. *Re Ladysmith Lighting Co.* (Wis.) 1050.

100. A minimum charge for electricity of 75 cents per month for residence-lighting consumers and \$1 per month for business-lighting consumers was held reasonable, where the average cost of service for minimum consumers was 75 cents per month. *Meek v. Consumers E. L. & P. Co.* (Mo.) 956.

101. A contract under which an electric company furnishes 221 sixty-watt Mazda lamps on a modified "Philadelphia moonlight schedule" for the compensation of \$250 per month was held reasonable. *Meek v. Consumers E. L. & P. Co.* (Mo.) 956.

102. The Commission found that a schedule of maximum rates of 15, 12, and 8 cents per kilowatt hour for electric lighting in a city, with 10 per cent discount for prompt payment and monthly minimum bill of 75 cents for residence lighting and \$1 for business lighting, was reasonable and just. *Meek v. Consumers E. L. & P. Co.* (Mo.) 956.

103. A minimum charge of not to exceed \$3 per month was fixed, for the use of electricity for a particular X-ray machine. *Butler v. Tucson Gas, E. L. & P. Co.* (Ariz.) 572.

Water.

Factors to be considered in determining reasonableness, see *supra*, 12, 18, 19, 21, 24.

Discrimination in rates, see *supra*, 36.

104. There is no ground for complaint that no rebate is made by a water company from the annual charge when a house is vacant, where it appears that the charge, though an annual one, is payable quarterly in advance in so far as the minimum charge is concerned, and the charge for excess will be in accordance with the reading of the meter, and the company will, upon notification from the consumer, remove the meter when the house is vacant. In *Re Watson* (N. J.) 307.

105. Water used in excess of the minimum allowance should not be charged for on the quarterly basis, since this makes possible a charge for excess water during quarters of heavy consumption, although the

RATES—continued.

total amount used may be less than the yearly minimum. *Re Reynolds (Conn.)* 892.

106. The rates of a water company, of \$3 per 1,000 cubic feet, with a minimum charge of \$20 per year, were held reasonable, where it appeared that after providing for economical operating expenses, interest at 6 per cent on the company's indebtedness, and for annual depreciation, there would be available for dividends about $1\frac{1}{2}$ per cent on the capital stock. *Re Reynolds (Conn.)* 892.

107. A flat rate for domestic use of water was ordered to be increased from \$1 to \$1.50 per month, where it appeared that the company was not making operating expenses. *Re North Moneta Garden Lands Water Co. (Cal.)* 645.

108. A water, light, power, and heat company, upon its own application, was allowed to reduce its minimum charge for water from \$1 per month per consumer to 50 cents per month per consumer. *Re Owensville Water, Light, Power & Heat Co. (Ind.)* 1007.

—Turning on and off.

109. A water, light, power, and heat company, upon its own application, was allowed to increase the turning on and off fee from \$1 to \$2, and to file with the Commission a rule for the \$2 charge. *Re Owensville Water, Light, Power & Heat Co. (Ind.)* 1007.

—Removing and replacing meters.

See also 104, *supra*.

110. Charges for removing or replacing meters are not proper, but must be absorbed in the charge for turning on or shutting off water, where the accounting system of the Commission provides for the capitalization of the cost of installing the meter on the first occasion, since thereafter its removal or reinstallation is an operating charge and must be borne by the company in the usual way. In *Re Watson (N. J.)* 307.

—Rate for fire purposes.

111. A water company was allowed to increase its city water rate from \$100 per month to \$140 per month for fire purposes, but was not allowed to increase its other rates, although it appeared that the revenues of the company were decreasing, where the rates, as modified by the Commission, were as high as the company could reasonably and justly charge. *Coalinga v. Pleasant Valley Water Co. (Cal.)* 575.

Telephones.

Power of Commission as to, see *supra*, 5-8.

Presumption as to reasonableness of, see *Evidence*, 1, 2.

Admissibility of evidence as to, see *Evidence*, 6.

112. A telephone company was ordered to discontinue the practice of making a toll charge, where a subscriber on one rural line directly connected with its exchange desires connection with a party on another rural line, also directly connected with its exchange. *Mahannah v. Arnett Teleph Co. (Okla.)* 1029.

113. Upon the compulsory physical connection of the lines of a local

RATES—*continued.*

telephone company with those of another company furnishing long distance toll service through the same town, it was ordered that the basis for toll line charges to or from the local company's exchange or rural lines should be the same as that to subscribers of the toll line company. *Darnell v. Pioneer Teleph. & Teleg. Co. (Okla.)* 80.

114. In the absence of any complaint as to the reasonableness of proposed new classifications and rates of a telephone company, involving no increases in charges they will become effective in Illinois thirty days after a schedule of the same shall have been filed with the Commission and posted and published in accordance with the terms of the public utilities law. *Re Commercial Teleph. & Teleg. Co. (Ill.)* 34.

115. A telephone company was authorized to increase its rates where it appeared that the additional revenue would be small, that the company had never declared dividends in excess of 6 per cent, and that while it had devoted its surplus earnings to additions and extensions, its maintenance expenditures, by reason of the aging condition of its plant, were gradually increasing. *In Re Hooper Teleph. Co. (Neb.)* 305.

116. A telephone company was authorized to increase its rates on the ground that the present rates did not meet the required demands for adequate service and provide a satisfactory return upon the investment, it appearing upon an analysis of its accounts that the probable total excess of revenues over expenses under the proposed rates would be reasonably needed to take care of its financial requirements. *In Re Clark County Teleph. Co. (Wis.)* 359.

— Discrimination.

As to discrimination of rates in general, see *supra*, 26-55.

117. A telephone company was authorized to revise its schedule of rates to include a classification of its service into single line and party line service, with different rates for each class, it appearing that discrimination had existed by charging patrons the same rate for each class of service. *In Re Hooper Teleph. Co. (Neb.)* 305.

118. A combined business and residence telephone rate which is less than the sum of the regularly published residence and business rates is forbidden by the Illinois Public Utilities Commission. *Re Tampico Farmers Mut. Teleph. Co. (Ill.)* 24.

119. A telephone company was ordered to discontinue certain irregular additional minute rates for toll service, and to substitute therefor the standard or regular additional minute rates, based on one third of the initial period rate in multiples of 5 cents, it appearing that only a few of the existing additional minute rates varied from the standard rate, that such variance caused confusion, that the increase in rates involved would apply to a very few points, that the increase in revenue would be negligible, and that the old rates were discriminatory under the public utilities act. *In Re American Teleph. & Teleg. Co. (Ill.)* 132.

120. Telephone companies were ordered to discontinue the practice of permitting or exacting a charge in addition to a statutory terminal fee for the delivery of toll messages to rural lines, on the ground that

RATES—*continued.*

it would make a different rate for a message in one direction from that in the other. *Re Teleph. Co. (S. D.) 1032.*

121. The fact that the subscribers of a telephone company enjoy service in a territory covered by one of its exchanges does not entitle them to the same service free of charge after such exchange and territory have been transferred to another company. *Shields Valley Commercial Club v. Mountain States Teleph. & Teleg. Co. (Mont.) 945.*

122. A rate for business and residence telephones when located on one line, which is less than the combined business and residence rates, is discriminatory, since it is the use to which a telephone is devoted which determines its classification. *Re Pukwana Teleph. Co. (S. D.) 952.*

123. Rural subscribers on lines connected with an exchange are entitled to the same privileges as any other subscribers directly connected with the exchange, and no charge should be made for local service to subscribers, other than the switching fee or exchange rental. *Mahannah v. Arnett Teleph. Co. (Okla.) 1029.*

124. The rates of a telephone company having been found discriminatory, it was ordered to file with the Commission within thirty days a schedule of nondiscriminatory rates, with a full explanation of the basis used in arriving thereat. *Shields Valley Commercial Club v. Mountain States Teleph. & Teleg. Co. (Mont.) 945.*

— Private branch exchange.

125. The filed tariff of a telephone company providing for flat-rate private branch exchange service to business places was held to apply to complainant's apartment houses, including connection with rooms and offices therein not occupied by tenants and with a power house located on the premises. *Olbiston Co. v. New York Teleph. Co. (N. Y.) 1025.*

126. A telephone company was ordered to install in complainant's apartment houses a flat-rate private branch exchange service, and to permit any and all of the tenants in such apartment houses who contracted for telephone service at direct line residence rates to have their lines connected with the central telephone office, through such private branch exchange, without additional charge. *Olbiston Co. v. New York Teleph. Co. (N. Y.) 1025.*

— Installation and removal of equipment.

127. A rule of a telephone company that the company will pay the initial expense of installation, and that the subscriber must pay the expense of any subsequent change in the location of the telephone instrument, was approved. *In Re Clark County Teleph. Co. (Wis.) 359.*

128. Telephone utilities should make no charge for new installation. *Re Proposed Order No. 137 (Okla.) 823.*

129. The numbers of telephone subscribers moving from one house to another should be transferred without charge, when it is not necessary to move the telephones. *Re Proposed Order No. 137 (Okla.) 823.*

130. A charge of not more than \$1 may be made for moving a telephone from one house to another, and of not more than 50 cents for moving a telephone from one room to another in the same building. *Re Proposed Order No. 137 (Okla.) 823.*

RATES—continued.

131. A charge may be made for removing telephones from one address to another after the first installation and prior to the expiration of the term of the subscription or contract for service, provided that the amount of this charge shall be as nearly as possible the actual cost of performing the work. *Re Tampico Farmers Mut. Teleph. Co. (Ill.) 24.*

132. The rule of a telephone company that after the expiration of the annual contract for service, a change of location will be made without charge upon the signing of a new annual contract, was approved. *Re Lafayette Teleph. Co. (Ind.) 930.*

— Disconnection charges.

133. The rule of a telephone company that a disconnection and reconnection charge of 50 cents shall be made against all subscribers within the municipal area whose service is discontinued for failure to make prompt payment in advance, was approved. *Re Lafayette Teleph. Co. (Ind.) 930.*

134. The rule of a telephone company that a disconnection and reconnection charge of \$2 shall be made against all subscribers outside of the municipal area whose service is discontinued for failure to make prompt payment in advance, was approved. *Re Lafayette Teleph. Co. (Ind.) 930.*

— Switching charges.

See also *infra*, 148.

135. The cost of operating a telephone system must necessarily be paid by the public, and if the cost of switching rural line phones is not borne by the subscribers getting the service, necessarily the rental rates of town subscribers will be increased to the extent of the cost of doing such rural party-line switching. *Re Teleph. Co. (S. D.) 1032.*

136. Telephone companies were ordered to discontinue an arrangement whereby 35 cents per month per phone was to be paid for switching rural party lines where the rate was not paid in advance, and to enter into a contract establishing a switching rate not in excess of 25 cents per month per phone, for each phone on any party line, that being the maximum charge fixed by statute for party-line switching within the state. *Re Teleph. Co. (S. D.) 1032.*

— Delivery charge.

137. Telephone companies were ordered to discontinue the practice of permitting or exacting an added charge for the delivery of toll messages to rural lines, on the ground that the statutory terminal fee of 5 cents for incoming and outgoing toll messages, originating or terminating within the state, is presumed to be reasonable and to afford compensation for all of the services in connection with the toll message, both in the originating and in the terminating exchange, as well as for the service of delivering the toll message over a rural line which is connected with the local exchange, whether that rural line be owned and operated by the local exchange or connected with it on the switching basis. *Re Teleph. Co. (S. D.) 1032.*

RATES—*continued*.— **Extension sets.**

138. A rule of a telephone company that extension sets and bells located outside the premises will be furnished for regular service at schedule rates with a mileage charge of \$3 per annum for each $\frac{1}{4}$ mile or fraction thereof without listing, and that extension sets and bells located out of doors or in open sheds will be charged for at double the regular price, was approved. In *Re Clark County Teleph. Co. (Wis.)* 359.

— **Suspended service.**

139. A rule of a telephone company that subscribers who may wish to suspend service for a portion of the year during absence from the community may do so upon payment of one half the regular net rate for the period of suspension, and that in no case shall an allowance be made for a period of less than one month, was approved. In *Re Clark County Teleph. Co. (Wis.)* 359.

— **Charge to nonsubscribers.**

140. A rule of a telephone company, prohibiting subscribers on its rural lines, and members of their families, from talking to nonsubscribers without the payment of a toll charge of 5 cents per message, having, upon complaint, been abolished by the company, a substituted rule limiting the charge to calling parties known to be nonsubscribers, and aiming to restrict conversations to five minutes, was held reasonable. *Hickman v. Columbia Teleph. Co. (Mo.)* 418.

141. A rule of a telephone company that rural service over trunk lines between central offices shall be free to subscribers, but if used by nonsubscribers shall be subject to the regular toll fee, was approved. In *Re Clark County Teleph. Co. (Wis.)* 359.

142. Telephone companies were ordered to establish a nonsubscriber rate for local service, should any be adopted. *Re Teleph. Co. (S. D.)* 1032.

— **Particular rates fixed.**

143. Rates proposed by a telephone company, of \$15 per year for individual line business telephones in cities, and \$10.20 per year in villages, were held not excessive. In *Re Tri-County Teleph. Co. (Ill.)* 129.

144. An increase in the rate for party-line rural telephones to \$7.20 per year was held reasonable. In *Re Tri-County Teleph. Co. (Ill.)* 129.

145. A telephone company was ordered to put into effect an optional schedule of \$1.25 per month for rural line telephone service, with a toll charge of 5 cents to and from another exchange, in place of a rate of \$1.50 per month with free service, when adopted by a majority vote of the subscribers on any line, such election to be at the beginning of any quarter and to be effective for at least two quarters following. *Coady v. La Crosse Teleph. Co. (Wis.)* 565.

146. A rural telephone rate of \$1.50 per month is not unreasonable where, in addition to rural and local exchange service, the subscribers receive free toll service to another exchange connecting them with some 3,300 installations. *Coady v. La Crosse Teleph. Co. (Wis.)* 565.

147. The Commission allowed an advance in telephone rural party-

RATES—continued.

line rates from \$18 per annum, with a \$6 discount for payment in advance, to \$1.25 per month or \$15 per annum, payable quarterly in advance, it appearing from a valuation of the property and a computation of revenues and proper expenses that such advance was reasonable. *Re Dakota Cent. Teleph. Co. (S. D.) 562.*

148. A switching charge by one telephone company to another was established, of 25 cents per telephone per month, with a minimum of \$1.50 and a maximum of \$5 per month for each line switched. *Ma-hannah v. Arnett Teleph. Co. (Okla.) 1029.*

149. The rule of a telephone company that a charge of \$2 shall be made for furnishing service at each and every location other than the one designated in the annual contract was approved. *Re Lafayette Teleph. Co. (Ind.) 930.*

150. The subscribers of a rural telephone line who receive switching service through an exchange should be required to pay at least the actual cost of such switching,—and in no case should this amount exceed the statutory maximum of 25 cents per month per phone. *Re Teleph. Co. (S. D.) 1032.*

151. The telephone exchange at the point where a toll message originates should have for its services 5 cents, and for the service of delivering the message at the exchange where it terminates there should be a compensation of 5 cents, and no more, under a statute providing for a terminal fee of 5 cents for incoming and outgoing toll messages originating or terminating within the state. *Re Teleph. Co. (S. D.) 1032.*

152. A telephone company was authorized to increase its business phone rate from \$1 to \$2 per month, and its residence and farm-line rates from \$1 to \$1.50 per month, where it appeared that revenues under its existing rates were insufficient to pay operation and maintenance expenses, let alone any rate on investments. *Re Western Nebraska Teleph. Co. (Neb.) 884.*

Street railways.

Power of Commission as to, see *supra*, 3.

Factors to be considered in determining reasonableness, see *supra*, 10, 25.

153. The Commission refused to reduce the fare of a street railway from 10 cents to 5 cents to and from a point three quarters of a mile beyond a 5-cent zone, where, in order to do so, the entire scheme of rates would require readjustment, especially where the company offered 40 ride tickets books at a price which would reduce a single fare to 6½ cents. *Re Thomas (Ariz.) 573.*

154. The mere fact that a street railway company is earning an excessive rate of return upon a valuation of its property used in serving the public does not justify the Commission in ordering a reduction from a 5 cent to a 3 cent fare during rush hours, unless such excess is shown to be sufficient to cover the amount of probable loss caused by such reduction. *Re Rochester (N. Y.) 1095.*

155. The order of the Commission made on August 23, 1912 (10 Wis. R. C. R. 1, 305), that the Milwaukee Electric Railway & Light Company and its allied companies discontinue a ticket rate of 25 for \$1, and

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substitute therefor a ticket rate of 13 for 50 cents, was rescinded as unreasonable, it appearing from an analysis of the capital account, operating expenses, and fixed charges that there was a failure of the companies to maintain the ordinary growth of their gross and net revenues during the last three years, due to causes wholly beyond their control, the net revenue resulting from the rates established by the Commission producing a return of 9.87 per cent in 1912, 7.29 per cent in 1913, and 5.45 per cent in 1914 upon the cost of reproduction new, based on the Commission's engineers' appraisal of the urban railway system, and a return of 2.16 per cent in 1912, 3.77 per cent in 1913, and 2.28 per cent in 1914 upon the cost of reproduction new of the suburban railway, and a return of 7.21 per cent in 1912, 6.14 per cent in 1913, and 4.47 per cent in 1914, on the cost of reproduction new of the combined urban and suburban systems, showing a considerably lower net return on the investment than the rates or costs at which it is well known that capital for similar undertakings can in the long run be had. *Woehsner v. Milwaukee (Wis.)* 270.

156. In a case in which a city complains that the 5 cent fare of a street railway company is burdensome and unreasonable, there are no preliminary considerations by which to determine whether such rate is, in or of itself, or as applied to the community in general, unreasonable or unjust. *Re Rochester (N. Y.)* 1095.

— Package or coupon tickets.

157. An order of the Commission of August 23, 1912 (10 Wis. R. C. R. 1, 305), that a railway company discontinue a ticket rate of 25 for \$1, and sell tickets in packages of 13 for 50 cents, was intended to abolish a former rate, and to establish a new rate of 13 for 50 cents in connection with an existing rate of 6 for 25 cents, rather than to establish a rate of 26 tickets for \$1. *Woehsner v. Milwaukee (Wis.)* 270.

158. It was the intent and purpose of the order entered in this case on the 30th day of January, 1915, also to rescind such part of any orders of the Commission entered in the case of *Cusick v. Milwaukee Electric R. & Light Co.* 10 Wis. R. C. R. 314, *Koenig v. Milwaukee Electric R. & Light Co.* 10 Wis. R. C. R. 337, and *East Milwaukee v. Milwaukee Electric R. & Light Co.* 10 Wis. R. C. R. 358, as might otherwise require the Milwaukee Electric Railway & Light Company or the Milwaukee Light, Heat, & Traction Company to discontinue the ticket rate for fare within the single-fare limits of the city of Milwaukee existing on August 23, 1912, or to sell tickets in packages of 13 for 50 cents. *Woehsner v. Milwaukee (Wis.)* 837.

159. Permission was granted a street railway to sell coupon books of tickets for \$2.70 each, good for 40 rides to and from a point in a 10-cent zone, reducing the single fare to 6½ cents. *Re Thomas (Ariz.)* 573.

Interurban railroads.

160. A joint passenger tariff of the Central Electric Traffic Association for interline passenger fares on interurban railroads in Indiana, Illinois, Kentucky, Michigan, and Ohio was approved by the Indiana

RATES—*continued*.

Public Service Commission so far as they related to the state of Indiana, where they did not exceed the sum of the local fares of the two or more carriers over which said interline fares extended, and did not exceed 2 cents per mile for the distance actually covered by the interline fares. In *Re Joint Passenger Tariff No. 14 of Central Electric Traffic Asso. (Ind.)* 338.

Railroads.

161. A reasonable increase over a freight rate allowed in a previous order for a strictly one-line haul may be allowed in a rate which is to apply alike, whether for one-line haul or more. *Lake Shore Stone Co. v. Ann Arbor R. Co. (Mich.)* 753.

162. An exception to the rule that all commodities, moving under class rates between Kansas points take the higher Missouri river rate as the maximum, based upon a single line haul, is made in relation to traffic moving between stations in Kansas, over the St. Louis & San Francisco Railroad and the Kansas City, Clinton, & Springfield Railway, so that any class rate which might otherwise be higher is controlled by the rate to Kansas City. *Hodges Bros. v. St. Louis & S. F. R. Co. (Kan.)* 1008.

163. The Commission issued a temporary order permitting all railroad companies to transport freight, for a period of sixty days, between competitive points, by other than the most direct route, at the legal rate applicable to the shortest and cheapest route, in order to facilitate the prompt movement of certain commodities. *Re Freight Shipments (N. C.)* 636.

164. The Commission refused to construe an explanatory clause of a railroad tariff in favor of a complainant shipper, where a different construction placed upon it by the railroad company had been acquiesced in by shippers for a number of years, merely on the ground that the clause was ambiguous. *Mason-Donaldson Lumber Co. v. Chicago & N. W. R. Co. (Wis.)* 149.

— Discrimination.

As to discrimination in rates generally, see *supra*, 26, 55.

165. The fact that a railroad company which maintains an interstate rate on poultry and stock food on the corn basis, and intrastate rates on the same products on the wheat basis, intends to advance the interstate rates some time in the near future, and to establish the intrastate rate on the same basis, is no defense to a proceeding for the adjustment of present rates on such products, on the ground that they are unreasonable and discriminatory. *Oklahoma Millers' Asso. v. Atchison, T. & S. F. R. Co. (Okla.)* 885.

166. The maintenance of differing schedules of rates by carriers of the same commodity under similar conditions, while affording prima facie ground for question, may not involve unjust discrimination. *Barker & S. Lumber Co. v. Chicago, M. & St. P. R. Co. (Wis.)* 144.

167. It is a violation of rule 13 of the Louisiana Commission, providing that "the rates prescribed by the Commission shall (except in cases specified) apply in either direction," to charge a higher rate for

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transportation of freight in one direction than is applicable in the opposite direction, although such higher rate appears in a duly filed and authorized tariff. *Parlin & O. Co. v. St. Louis, I. M. & S. R. Co. (La.)* 460.

168. Railroad companies were ordered to refund to a shipper the difference between a rate that had been collected on a shipment of oak lumber and a lesser rate of the same companies which was in effect at the time, upon the same commodity, for a greater distance, over the same route and in the same direction. *Naber v. Norfolk & W. R. Co. (Ohio)* 481.

169. A railroad company was authorized to waive the difference between freight charges assessed by it on certain shipments of cedar trees based on local rates then in effect, and the charges that would have applied under rates authorized by the Commission to take effect shortly thereafter, where it appeared that the shipper understood that the latter rates were in effect at the time of the shipment, that the rates charged were excessive, and that no discrimination would result inasmuch as no other shipments of the same class had been made over the railroad during the period that negotiations were carried on relating to the shipment. *Re Chicago, M. & St. P. R. Co. (Idaho)* 714.

169a. The practice with reference to switching charges should be uniform, and the treatment of such charges should be the same in Oklahoma as it is in Texas, Kansas, and other surrounding states. *In Re Order to all Railroad Cos. Operating in Oklahoma (Okla.)* 217.

—Interstate and intrastate rates.

170. The maintenance of a charge of \$5 a day for reicing refrigerator cars detained through failure of the shipper, on intrastate shipments, and a charge of \$10 a day for the same service on interstate shipments, is a discrimination which should be removed by raising the lower charge on intrastate shipments, where it is shown that such latter charge does not cover the actual cost of rendering the service. *Re Southern P. Co. (Cal.)* 860.

171. The intrastate classification of poultry and stock food for rate purposes was made to conform to the interstate classification of the same products, by changing from wheat rate basis to the corn rate basis, where it appeared that under the existing discriminatory rates Oklahoma producers were unable to compete with interstate business. *Oklahoma Millers' Asso. v. Atchison, T. & S. F. R. Co. (Okla.)* 885.

—Return shipment.

172. A rule fixing the basis for rates to be applied on shipments returned to the shipper at the point of origin is inapplicable to a shipment not returned to the point of origin. *Parlin & O. Co. v. St. Louis, I. M. & S. R. Co. (La.)* 460.

—Water competition.

173. The Commission will not reduce, as unreasonable or excessive, intermediate point rates which are higher than through rates based upon water competition, where such intermediate rates do not yield more than their fair share of the cost of transportation or service in-

RATES—continued.

volved, and where no unjust discrimination is found. *Mason-Donaldson Lumber Co. v. Chicago & N. W. R. Co.* (Wis.) 149.

174. The Commission will not reduce rates between intermediate points which are higher than through rates based upon water competition, when such intermediate rates are not in themselves excessive or unreasonable. *Mason-Donaldson Lumber Co. v. Chicago & N. W. R. Co.* (Wis.) 149.

— — Transit privileges.

175. Intrastate shippers are entitled to transit privileges in the marketing of poultry and stock food where such privileges are accorded to interstate shippers. *Oklahoma Millers' Asso. v. Atchison, T. & S. F. R. Co.* (Okla.) 885.

176. Intrastate transit privileges were established for poultry and stock food similar to the regulations applying to interstate, but with an increase from 20 to 33½ in the percentage of ingredients other than grain, seeds, alfalfa hay, and products thereof which shall be permitted in the mixture upon which transit privileges were to apply. *Oklahoma Millers' Asso. v. Atchison, T. & S. F. R. Co.* (Okla.) 885.

177. There is no objection to an increase in the percentage of foreign ingredients in poultry and stock foods, where shippers claim no transit privileges upon such ingredients and the increase results in a greater revenue to the carriers. *Oklahoma Millers' Asso. v. Atchison, T. & S. F. R. Co.* (Okla.) 885.

— — Dunnage.

178. The carriers of Nebraska, upon application to the Commission, were permitted to cancel a rule giving shippers an allowance for dunnage used to protect and support freight shipped in bulk, box, stock, ventilated, or refrigerator cars, upon the ground that it tended to encourage carelessness in packing, and to increase transportation risks, and to create a form of discrimination against shippers tendering goods packed in containers. *Re Trans-Missouri Freight Bureau* (Neb.) 67.

— — Car rental.

179. All railroads in the state of Louisiana were ordered to discontinue charging "car rental" on cars containing freight transported from one point to another within prescribed switching limits at published switching rates, or elsewhere in the state of Louisiana. *Order No. 1856* (La.) 465.

— Switching charges.

180. The rules of the Commission regulating charges on joint through shipments where there is no established joint through rate contemplate the absorption of all interchange charges by one of the carriers. *Railroad Commission v. Morgan's Louisiana & T. R. & S. S. Co.* (La.) 469.

181. Initial carriers were ordered to protect the sum of the lowest local rates or the sum of the mileage rates less 10 per cent on shipments moving from points on their lines to points on connecting lines *via* a certain junction point, where there were no through rates estab-

RATES—*continued.*

lished, and to absorb the switching charges. Railroad Commission v. Morgan's Louisiana & T. R. & S. S. Co. (La.) 469.

182. A railroad company was authorized to publish a rule with reference to switching charges for handling cars, loaded and empty, where it appeared that the application was reasonable and warranted by existing conditions, the same to become effective as provided in the order. In Re Union P. R. Co. (Neb.) 143.

— Charge for reicing cars.

See also *supra*, 170.

183. A railroad company, in arriving at a reasonable charge for reicing detained refrigerator cars, is entitled to include in the costs the customary company freight rates for transporting the ice, only, and not the full commercial rates, where, although the ice is transported by another company, 50 per cent of the capital stock of the company is owned by the railroad company. Re Southern P. Co. (Cal.) 860.

184. A railroad company was allowed to increase its charge for reicing refrigerator cars on intrastate shipments detained through fault of the shipper, from \$5 to \$10 a day, where it appeared that the former charge did not cover the actual costs of rendering the service. Re Southern P. Co. (Cal.) 860.

— On particular commodities.

Rates on cedar trees, see *supra*, 169.

— — Explosives.

185. A railroad company was authorized to substitute for its existing tariff covering the charges for storage of explosives, a new tariff consisting of extracts taken from the regulations of the Interstate Commerce Commission, which provides that in case explosives or articles are not removed by the consignee from the carrier's premises within forty-eight hours after notice of arrival, they must be disposed of by return to the shipper, or by storage at the expense of the owner at certain prescribed rates, or by sale, or, when necessary for safety, by destruction under supervision of a competent person. Re Chicago, St. P. M. & O. R. Co. (Neb.) 881.

— — Fruit, melons, and vegetables.

186. Freight rates on fruits, melons, and vegetables transported in small quantities over any single railroad line to points of concentration from points distant 50 miles or less were reduced to 5c per 100 pounds, to induce concentration for reshipment in carload lots; it being provided, however, that reshipment from points on certain specified railroad lines shall be made over the respective lines of the first movement. Re Amendment to Commodity Tariff No. 31-a (Tex.) 721.

— — Cotton.

187. The Commission refused to allow a railroad company to increase its rate on cotton and cotton linters from Calxico to Los Angeles and San Pedro from 40 cents to 50 cents per 100 pounds. Re Southern P. Co. (Cal.) 850.

188. A railroad company was authorized to increase the minimum

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carload rate on uncompressed cotton from Calexico and Glamis to San Francisco, and from Glamis to Los Angeles and San Pedro, from 16,000 to 20,000 pounds, upon condition that the rate on uncompressed cotton from Glamis to San Pedro and Los Angeles be reduced from 50 cents to 40 cents per 100 pounds, concurrently with the increase in the minimum carload weight. *Re Southern P. Co. (Cal.) 850.*

— — Brick.

189. Brick is a low-grade commodity, which should move according to substantially the same rules and under the same conditions that are accorded to commodities of similar character and grade. *Hodges Bros. v. St. Louis & S. F. R. Co. (Kan.) 1008.*

190. A complaint that a rate of 6½ cents on brick in carload lots, from points in the southern Kansas gas belt to Stanley, is unjust and discriminatory, was dismissed, as to the Missouri Pacific Railway Company, on the ground that the movement through Kansas to Stanley, as a point of destination, over any portion of the company's lines would constitute a three-line movement. *Hodges Bros. v. St. Louis & S. F. R. Co. (Kan.) 1008.*

191. The rate upon brick in carload lots from points of origin in the southern Kansas gas belt, over the St. Louis & San Francisco Railroad and the Kansas City, Clinton, & Springfield Railway, should not exceed the rate from the same points to Kansas City, or 5 cents per 100 pounds, although constituting a two-line haul. *Hodges Bros. v. St. Louis & S. F. R. Co. (Kan.) 1008.*

— — Clay.

192. A railroad company should maintain lower rates between the same points on clay than it maintains on fire and face brick, these being manufactured articles of somewhat greater value than clay. *Carnegie Brick & Pottery Co. v. Western P. R. Co. (Cal.) 1079.*

193. Railroad rates for the transportation of clay in carload quantities between certain points were found to be unjust, unreasonable, and excessive, where it appeared that such rates were as high as those for the transportation between the same points of fire and face brick, manufactured articles of greater value than clay. *Carnegie Brick & Pottery Co. v. Western P. R. Co. (Cal.) 1079.*

194. A railroad company was ordered to publish and file and to put into effect as just and reasonable a rate of 65 cents per ton of 2,000 lbs. on clay in carload quantities of 60,000 lbs. or more, from Tesla, Walden, and Carnegie to Stockton, California. *Carnegie Brick & Pottery Co. v. Western P. R. Co. (Cal.) 1079.*

— — Marl and limestone.

195. Railroads were ordered to cancel their tariffs or items in tariffs naming a rate for the transportation of agricultural limestone or ground or natural marl, and to issue and make effective tariffs for such commodities not to exceed 55 per cent of the current sixth class. *Lake Shore Stone Co. v. Ann Arbor R. Co. (Mich.) 753.*

196. Pulverized limestone used exclusively for agricultural purposes

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should be **granted** a reasonably low freight rate. Lake Shore Stone Co. v. Ann Arbor R. Co. (Mich.) 753.

Express.

197. The Louisiana Commission, after an investigation of intrastate express rates, established such rates on the block system as outlined by the Interstate Commerce Commission. Alexandria Chamber of Commerce v. Express Cos. (La.) 458.

198. The Commission, finding that the adoption of the block system of express rates as prescribed by the Interstate Commerce Commission had resulted in an unreasonable increase in rates upon first-class merchandise at two points peculiarly located, ordered that such points should, for express-rate purposes, be given a different block number, taking a lower rate. Lafayette Chamber of Commerce v. Express Cos. (La.) 464.

199. The Commission dismissed a petition for the reduction as unreasonable of the rate on beer, refusing to allow a lower rate on that commodity than upon others, such as fruit, vegetables, butter, eggs, etc., most generally used by the public, for all of which a commodity or class rate had been established by order No. 1693, March 12, 1914. Alexandria Chamber of Commerce v. Express Cos. (La.) 458.

READINESS TO SERVE.

As affecting rates, see Rates, 19, 20.

REAL ESTATE.

See Land.

REASONABLENESS.

Of return, see Return.

Of rates, see Rates.

RECONNECTION.

Of telephone, charge for, see Rates, 133.

RECORDS.

See also Reports.

Filing of, see Telephones, 9-13.

1. Reliable, adequate, and permanent records, such as those relating to the division of the demand among the different classes of service rendered by the utility, the record of kilowatt hours generated, cost data, amount of service produced, proper consumer statistics, etc., are invaluable, not only for the use of the Commission, but as an aid to more efficient plant operation, and should therefore be kept by an electric lighting utility company. Re Ladysmith Lighting Co. (Wis.) 1050.

Authority to destroy.

2. A telephone company was authorized to destroy certain of its records and memoranda where it appeared that the application was rea-

RECORDS—continued.

sonable, warranted by existing conditions, and that the records and memoranda were not of permanent value. In *Re Nebraska Teleph. Co.* (Neb.) 142.

3. A telephone company was granted authority to destroy certain of its records and memoranda, it appearing that the records and memoranda in question were not of permanent value. *Re Nebraska Teleph. Co.* (Neb.) 878.

RECTIFIERS.

Electric rates for, see *Rates*, 74.

REFUNDING.

Of lawful obligations, see *Security Issues*, 14-23.

REFUSAL.

To render service because of failure to pay bills, see *Service*, 139-141.

REGULAR USE.

Of telephone, see *Telephones*, 14.

REGULATION.

Advantages of, over municipal ownership, see *Consolidation, Merger, and Sale*, 6.

Of security issues, see *Security Issues*.

REICING CARS.

Charge for, see *Rates*, 170, 183, 184.

REMEDY.

Of telephone company for location of high tension wires, see *Commissions*, 7.

REMOVAL.

Of telephones, see *Telephones*, 21, 22.

Of telephone, charge for, see *Rates*, 127.

RENTAL.

Of meter for electricity, see *Rates*, 93, 94.

REPARATION.

Validity of statute for reparation of excessive charges by the railroad, see *Statutes*, 1.

Validity of statute requiring reparation of excessive rates, see *Constitutional Law*, 2.

Limitation of action for, see *Limitation of Actions*.

1. An award of reparation will not be granted unless, in addition to proving that the rate at the time it was charged was excessive, it is also shown by the claimant for reparation that some damage or injury was done.
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jury was sustained by it, by reason of the imposition of such excessive rate. *Carnegie Brick & Pottery Co. v. Western P. R. Co. (Cal.)* 1079.

2. An award of reparation will not be granted to increase the profits of a claimant to the extent that the rates charged were found to be excessive, where it appears that the goods transported were in no case sold without profit, such difference in profits not constituting damage or injury to claimant due to the imposition of excessive rate. *Carnegie Brick & Pottery Co. v. Western P. R. Co. (Cal.)* 1079.

3. A railroad company which has failed to deliver shipments of freight promptly, as required by the rules of the Commission, is liable for the car rental charges against the shipper under the terms of a contract between a car company and the shipper, although the railroad company is not a party to such rental contract. *New Orleans Joint Traffic Bureau v. Texas & P. R. Co. (La.)* 879.

4. The Commission will order reparation where it appears that excessive freight charges have been collected in violation of its rules and orders, although an authorized tariff containing the excessive rate has been filed and published. *Parlin & O. Co. v. St. Louis, I. M. & S. R. Co. (La.)* 460.

5. A request by a petitioning shipper for reparation in such sum as the Commission should find charges paid in excess of reasonable charges was dismissed, where it appeared that the petitioner's business had shown a steady increase in volume covering the period during which the rates complained of had been in force. *John H. Allen Seed Co. v. Chicago & N. W. R. Co. (Wis.)* 352.

REPEAL.

Amendment of repealed act, see Statutes, 5.

REPLACEMENTS.

Issuance of securities to pay for, see Security Issues, 33.

REPORTS.

See also Records.

Of telephone companies to be filed with Commission, see Telephones, 12.

Penalty for failure to make, see Fines and Penalties, 3.

1. Public service companies are forbidden to circulate among their patrons or the public, in any written or printed notice or other communication, any ruling, regulation, or order of the Commission, unless an exact copy is set forth at length and the date thereof also stated, and exact copies of all such notices filed with the Commission within three days of the date of issuance thereof. *Re Publication of Commission's Rulings (Pa.)* 87.

REPRODUCTION COST.

Definition of, see Valuation, 6.

Allowance for depreciation in estimating, see Depreciation, 21, 22.

As theory of valuation, see Valuation, 8-13.

REPRODUCTION COST LESS DEPRECIATION.

Definition of, see Valuation, 7.

RESERVOIR.

Depreciation of, see Depreciation, 22.

RESTRAINT OF TRADE.

Jurisdiction of Commission to determine whether contracts are in, see Commissions, 10.

RETURN.

As to rates generally, see Rates.

Amount of security issues as dependent upon ability to pay dividends, see Security Issues, 38.

Issuance of securities to pay operating expenses, see Security Issues, 31, 32.

Security issues to reimburse dividend fund, see Security Issues, 14.

Allowance for depreciation in, see Depreciation.

Distributing in dividend funds applicable for depreciation, see Depreciation, 4, 5.

Apportionment of revenues, see Apportionment, 2, 3.

1. It is not certain that a reduction in the dividends of a gas company will necessarily follow a reduction in the price of its commodity. *Re Lawrence Gas Co. (Mass.)* 814.

2. Statutes designed to restrict the issue of stock to the actual investment are not in themselves confiscatory. *Re Northampton Gas Petition (Mass.)* 618.

Return considered with respect to reasonableness.

3. All that a public service company is entitled to demand in order that it may have a full compensation is a fair return upon the reasonable value of its property at the time it is being used by the public. *Meek v. Consumers E. L. & P. Co. (Mo.)* 956.

4. Telephone companies were ordered to establish a just and reasonable schedule of yearly rental rates, such rates to be sufficiently high to allow the stockholder a fair return on his investment. *Re Teleph. Co. (S. D.)* 1032.

5. A gas company should be permitted to charge any reasonable rate that will produce the greatest net revenue when such company is not making sufficient revenue to provide for depreciation and interest on the investment. *El Reno v. El Reno Gas & Electric Co. (Okla.)* 226.

6. Considerations of public policy require that a power company be permitted to raise its rates when it appears from an examination of its business that the return from existing rates is so low as to threaten or endanger the very existence of the enterprise. *Re Rhinelander Power Co. (Wis.)* 652.

7. The rates of a gas company will not be reduced as exorbitant when it appears that the net earnings are insufficient to pay interest and provide a reasonable depreciation allowance on a plant value fixed by the Commission, without investigation, at two thirds of the reproduction

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value reported to the Commission by the gas company. *El Reno v. El Reno Gas & Electric Co.* (Okla.) 226.

8. The reasonableness of the return to a public utility operating under a statutory policy limiting its capitalization to actual investment is to be related, not merely to what may be regarded as the value of the property; but to the legitimate capital stock outstanding and representing such property. *Re Northampton Gas Petition* (Mass.) 618.

9. A rate is to be held confiscatory, if at all, because it may fairly be expected in its effect upon future business to operate to deprive the company of the reasonable earning power of its property. *Re Northampton Gas Petition* (Mass.) 618.

10. The language of the public service commission law empowering the Commission to determine the reasonableness of railroad rates seems to contemplate the formation by the Commission of a belief based upon evidence generally that the rate complained of is unreasonable and unjust, and that the Commission, in determining the reasonable rate for the future, shall pay due regard to a fair return upon the property value. *Re Rochester* (N. Y.) 1095.

Factors to be considered in determining reasonableness.

Of rates, see Rates, 10-25.

11. The value or original cost of a property, the market value of stocks, or any of the other factors in a proceeding to determine the rates to be charged, are important only so far as, together, they aid to a correct conclusion as to the rate that shall be fair alike to the company and to the public, and this conclusion must rest until vindicated by experience, not in a mathematical demonstration, but in the exercise of sound judgment. *Re Northampton Gas Petition* (Mass.) 618.

12. It is unnecessary, in order to avoid the charge of confiscation, to base rates solely on the cost of reproduction of the property, where such a basis would logically give the company an indefeasible right to increase rates, which already yield reasonable dividends on a capitalization limited to actual investment. *Re Northampton Gas Petition* (Mass.) 618.

13. A reasonable return can be determined upon broader and firmer grounds than those afforded by valuation of the property by the reproductive method, when there exists such a policy as that declared by the Massachusetts statutes, primarily adopted to restrict the original issue of capital stock of gas companies to the actual investment made by stockholders, to prohibit stock dividends, and to limit additional stock or bonds to such amounts only as are reasonably necessary for authorized purposes, all with a view to keeping down the dividend burden which the public must meet in the rates charged. *Re Northampton Gas Petition* (Mass.) 618.

14. A return based solely on the cost of reproduction of the property would be unreasonable to the public, where such a basis would logically give the company an indefeasible right to increase rates which already yield reasonable dividends on a capitalization limited to actual investment. *Re Northampton Gas Petition* (Mass.) 618.

15. A Commission can determine in a satisfactory manner whether

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rates are unreasonably low only by ascertaining what it should cost the utility to produce its commodity under reasonably efficient operation. *Re Rhinelander Power Co. (Wis.) 652.*

16. A more accurate appraisal of a water company's property than appears in the records on file in the Commission's office and on testimony presented at the hearing is unnecessary in a rate inquiry, where there is a wide margin between actual net return and the rate of return on the investment, which the Commission would be disposed to allow the company, before declaring the return from the rates complained of unreasonable. *Re Reynolds (Conn.) 892.*

17. The Commission, in its decision in 10 Wis. R. C. R. 1, did not hold that it is untenable to consider the suburban system income accounts with the Milwaukee urban income accounts of the railway companies as a basis for rates of fare. *Woehlsner v. Milwaukee (Wis.) 270.*

Reward for efficiency.

18. Liberal dividends should be allowed as a reward for progressive and efficient management, but they will not be regarded as a right, creating of itself the excuse for the maintenance of a price. *Re Lawrence (Gas Co. (Mass.) 814.*

19. The manner in which plant value has been created, the policy pursued in the issue of securities, the intelligence, honesty, and prudence of the management, have an important bearing on the amount of the return divisible among the stockholders, such factors affording an effective stimulus to a recognition by managements of the common interests of both stockholders and consumers. *Re Northampton Gas Petition (Mass.) 618.*

Operating expenses — Excessive amount of.

20. A telephone company was allowed to increase its rates in spite of the fact that its operating expenses were unusually high, where it was shown that this was largely due to conditions incident to the development of an oil country. *Re Cushing Teleph. Co. (Okla.) 639.*

21. Extravagant operating expenses of a public utility should be reduced, or the company should be made to suffer a corresponding reduction in the return, since the public, while not interested in the apportionment of a given sum between dividends or management costs, is clearly interested when the combination of such costs is unreasonably high. *Re Northampton Gas Petition (Mass.) 618.*

22. General office and management expenses are unreasonably high where it appears that they are more than experience shows to be necessary for skillful and efficient management, and that an association which owns the company is making an unwarranted profit on the services of those managing the company, and where no decrease in unit costs follows any increase in output. *Re Northampton Gas Petition (Mass.) 618.*

—Elements constituting.

23. No part of the operator's salary or office rent of a local exchange performing switching service for rural party lines owned by the same company is chargeable as an operating expense against such lines already

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charged with a statutory fee of 25 cents per month upon each instrument for such service. *Re* Dakota Cent. Teleph. Co. (S. D.) 562.

24. Rental paid by a street railway company for a subway containing wires to its manholes used to take current to its lines is a proper item of current expense. *Re* Rochester (N. Y.) 1095.

25. Increase of wages of employees of a street railway company as the result of an award made pending the investigation of a complaint asking for a reduction of fares during certain hours, and covering the period under investigation, was considered by the Commission in determining the actual operating expenses of the company for that period. *Re* Rochester (N. Y.) 1095.

26. Sums paid by a street railway company for accrued accidents and damages should be taken into account in estimating operating expenses. *Re* Rochester (N. Y.) 1095.

Amortization of bond discount expenses.

27. A telephone company was ordered to amortize by payment of equal instalments out of income all discounts, commissions, and expenses in connection with the approval, issuance, and sale of an authorized issue of bonds, before the maturity thereof. *Re* National Teleph. & Electric Co. (Ill.) 872.

28. All disbursements, commissions, and expenses in connection with the approval, issuance, and sale of an authorized issue of first and re-funding 5 per cent mortgage bonds were ordered to be amortized out of the income of the issuing company by the payment of equal monthly instalments. *Re* Peoria R. Co. (Ill.) 804.

29. All discounts, commissions, and expenses in connection with the approval, issuance, and sale of an authorized issue of first-mortgage 4 per cent bonds of the par value of \$2,748,000, were ordered to be amortized out of the income of the issuing company in equal annual instalments. *Re* Chicago G. W. R. Co. (Ill.) 800.

Surplus and contingencies.

30. A reserve for surplus above operating cost should be made from the revenues of a street railway company to provide for improvements, either by full payment therefor from such surplus, or to meet increased charges on required additional bond capital, or return upon necessarily issued additional stock. *Re* Rochester (N. Y.) 1095.

31. It is a wise business policy on the part of a public utility corporation as well as a benefit to the public to make reservations for surplus and contingencies. *Meek v. Consumers E. L. & P. Co.* (Mo.) 956.

32. An allowance of 5 per cent on the fair present value of the property of an electric light and power company was made by the Commission to provide for surplus, contingencies, and depreciation. *Meek v. Consumers E. L. & P. Co.* (Mo.) 956.

Particular amounts considered.

33. A general increase in the rates of a farm telephone company is held not justifiable where the record shows that the net yearly return has amounted to 13.7 per cent. *Re* Lynch Teleph. Co. (Neb.) 64.

34. A reduction from 90 cents to 85 cents in the maximum net price

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of gas to be charged by a company was recommended, where, among other things, it appeared that the company had consistently pursued a policy of representing in capital stock every item of expenditure attendant upon the extensions of its plant, and had paid 6 per cent dividends on its stock for a considerable period prior to 1907, 7 per cent dividends in 1907, and 8 per cent dividends each year thereafter, and had been able to issue stock at premiums from which it had realized in all the sum of \$654,987 in addition to the par value thereof. *Re Lawrence Gas Co. (Mass.)* 814.

35. A telephone company was authorized to increase its farm-line rates and to establish a new farm-line switching rate where its earnings from its present rates were insufficient to meet operating expenses, including maintenance and depreciation, and pay an 8 per cent return on its capital liabilities. *Re Maxwell & B. Teleph. Co. (Neb.)* 471.

36. A return of 8 per cent on capital liabilities of \$10,000 was considered to be a very conservative allowance where the reproduction new value of a telephone company's property was found to be \$27,003, and its depreciated value \$18,095.64 and where it was shown that the company was paying 10 per cent per annum for borrowed capital. *Re Maxwell & B. Teleph. Co. (Neb.)* 471.

37. Dividends of 8 per cent are not necessary to attract the capital reasonably necessary for the expansion of the business of a gas company which is well managed and favorably located, and which follows a conservative policy in issuing securities. *Re Lawrence Gas Co. (Mass.)* 814.

38. An allowance for dividends of 7 per cent of the present value of telephone rural party lines was made by the Commission, in computing the reasonable expenses to be charged against such lines in a valuation for rate purposes. *Re Dakota Cent. Teleph. Co. (S. D.)* 562.

39. A water utility was ordered to revise its schedule of rates so as to decrease its minimum monthly charge, and increase certain of its rates for water in excess of the minimum, where its present revenue was insufficient to cover the cost of maintenance and operation, a reasonable depreciation; and interest at 6 per cent per annum on the Commission's valuation, it appearing that the estimated revenue was based upon a year of insufficient water supply, and that there would be a gradual increase in the number of consumers. *Re Dell Segno (Cal.)* 857.

40. The rates of a water company were found not to be excessive, and a readjusted schedule, which would somewhat increase the revenue was held warranted when its operating expense plus an allowance for depreciation and a 6 per cent return on the value of its property exceeded its receipts, although a portion of its operating expenses were abnormally high because of a dry year. *Corona v. Corona City Water Co. (Cal.)* 782.

41. A telephone company was authorized to increase its rates, where it appeared that its net income would yield only 4.6 per cent interest on the investment, without an allowance for depreciation. *Re Cushing Teleph. Co. (Okla.)* 639.

42. In an investigation of gas rates, an allowance of the minimum

RETURN—*continued*.

rate of 6 per cent interest annually upon the investment for the purposes of computation is not to be considered a determination by the Commission of the proper rate. *El Reno v. El Reno Gas & Electric Co. (Okla.)* 226.

43. A return of 8 per cent on the fair present value of the property of an electric light and power company was allowed where there appeared to be considerable risk in the particular enterprise and little chance for abnormal profits, and where there had been included in the operating expenses such items as insurance, taxes and license fees. *Meek v. Consumers E. L. & P. Co. (Mo.)* 956.

44. The rate of fare of a street railway company should not be reduced from 5 cents to 3 cents during rush hours, where it appears that a return from the present rate upon an agreed valuation is 8.58 per cent, and the percentage of return on the reduced revenue would be 4.55 per cent, and where, if an increase in back wages allowed by arbitrators and considered by the Commission in arriving at such percentages should be disregarded, the percentage of return from the present rate would be 9.03 per cent and from the reduced revenue only 5 per cent. *Re Rochester (N. Y.)* 1095.

45. An electric lighting company should be entitled to at least 12½ per cent on an investment in additional equipment for electric pumping, to cover the necessary interest, depreciation, and tax charges. *Re Lady-smith Lighting Co. (Wis.)* 1050.

46. An annual amortization allowance equal to 33.3 per cent of the value of the property of a water company will not be made on the supposition that the city which the company supplies will be extinct in ten years, merely because the population of the city has decreased within two years and operations in certain oil fields on which the city is dependent have also diminished, where other facts point to a much longer life for the city. *Coalinga v. Pleasant Valley Water Co. (Cal.)* 575.

RETURN SHIPMENT.

Rates on, see Rates, 172.

REVENUES.

See Return.

REVIEW.

See Appeal and Review.

REWARD.

Liberal dividends as reward for efficiency, see Return, 18, 19.

RIGHT TO DO BUSINESS.

Under franchise as property right, see Franchise, 1.

ROCK.

Cost of rock excavation, see Valuation, 21.

Suspension of railroad service because of rock slides, see Service, 116.

ROLLING STOCK.

Situs of, for purpose of taxation, see Taxation, 1-5.

RUSH HOURS.

Possibility of increased patronage as affecting reduction of rates during, see Rates, 25.

Service of street railways during, see Service, 82-84.

Agreed valuation as basis for determining reasonableness of proposed reduction in fares during, see Valuation, 71.

SAFETY DEVICE.

Installation of, upon railroad, see Railroads, 2.

SALARIES.

Allowance of salary of officers in going value, see Valuation, 53.

SALE.

See Consolidation, Merger and Sale.

SALE PRICE.

Of security issues, fixed, see Security Issues, 46-56.

SCHEDULE.

Of rates, see Rates.

SCHOOLS.

Telephone rates for, see Rates, 34.

Reduced light and water rates to, see Rates, 39.

SCRAP VALUE.

Consideration to be given to, in allowing depreciation, see Depreciation, 3.

SEATS.

For passengers on steam railroad, see Service, 109.

For passengers on street cars, see Service, 85.

SECURITIES.

Issuance of, see Security Issues.

Issuing securities to provide for deficiency in sale of, see Security Issues, 29, 30.

For payment for service, see Service, 142-144.

SECURITY.

For payment for service, see Service, 142-144.

SECURITY ISSUES.

Statutes restricting issuance of securities as violative of the constitution, see Constitutional Law, 1.

SECURITY ISSUES—continued.

Inability to market securities as justification of failure to extend service, see Service, 16.

Requirement that subscribers own securities before service is rendered, see Service, 47-49.

1. The fact that the holder of a public service corporation's promissory note issued without the required consent of the Commission, but for a proper indebtedness, has offered to discount it, does not justify the Commission in fixing the amount of a new note authorized to be issued in lieu thereof, at the sum at which the old note was offered for discount, instead of at the face value of the original note. *Re Escondido Utilities Co. (Cal.)* 1071.

2. A corporation was ordered to issue promissory notes to the amount of \$29,000, on condition that it levy an assessment on its stock to the sum of \$5,000, the proceeds therefrom to be applied to the indebtedness represented by such note issue, it appearing that the earnings of the company were not adequate to meet higher interest charges and that increase in the earnings was more or less uncertain. *Re Escondido Utilities Co. (Cal.)* 744.

3. A plan for financing the construction cost of an electric railway line by issuing to a construction company the notes and deferred payments of subscribers to the stock of the electric company was not approved, it appearing that only 210.7 shares of the authorized issue of 670 shares had been subscribed to, that only \$802 had been paid in cash out of the \$21,070 due, and that the estimate of the cost of the proposed line approved by the Commission was \$35,000. *Re Marin County Electric R. Co. (Cal.)* 890.

Jurisdiction and power of commission.

4. The Commission has no power to validate notes illegally given by a railroad company, but can authorize a new note to take the place of one improperly issued. *Re Oakland, A. & E. R. Co. (Cal.)* 643.

Effect of illegal issue.

5. A two-year promissory note of a public service corporation, issued without the consent of the Commission, is void under the public utilities act. *Re Escondido Utilities Co. (Cal.)* 1071.

6. Authority will not be given a gas company to issue bonds to produce funds for working capital, where it appears that the need therefor is due to its having pledged a previous issue of bonds as collateral for notes amounting to less than 70 per cent of the par value of the bonds, the statute requiring bonds to yield at least 80 per cent of par. *Re Standard Gas Co. (N. J.)* 632.

7. Approval of an application by a gas company for authority to issue \$22,195 per value of bonds at 80 per cent of par, to be used in paying for extensions and additions, was withheld, pending correction by the company of certain conditions relative to an illegal pledge of a prior issue of bonds. *Re Standard Gas Co. (N. J.)* 632.

Pledge as issue.

8. The use of \$98,000 par value of bonds as collateral for \$65,492 of

SECURITY ISSUES—continued.

notes contravenes an act requiring that bonds may not be issued at less than 80 per cent of par. *Re Standard Gas Co. (N. J.)* 632.

Purpose — Reimbursement of dividend funds.

See also *infra*, 28.

9. A water company was authorized to issue \$11,500 par value of common stock to its stockholders in proportion to the face value of their present holdings, as a stock dividend to compensate them in full for the use by the company of its net surplus, amounting to \$24,556.76, in extensions and betterments of plant, instead of applying the same to the payment of cash dividends. *Re Linton Water Co. (Ind.)* 540.

10. A telephone company was authorized to retire its common capital stock in the amount of \$20,000, and to issue in exchange therefor its common capital stock to the amount of \$25,000 where it appeared that the company had theretofore actually expended the sum of \$5,000 from its income, not directly or indirectly secured or obtained from the issue and sale of securities, for the construction, completion, extension, and improvement of or addition to the facilities of the company, and where it appeared further that none of said expenditures were, in whole or in part, reasonably chargeable to operating expenses or income. *In Re Amended Application of Maroa Mut. Teleph. Co. (Ill.)* 205.

11. An electric company was authorized to issue first and refunding mortgage 5 per cent sinking fund gold bonds to the amount of \$115,000, and to sell the same at not less than 85 per cent of the par value thereof, plus accrued interest, in order to reimburse its income account for money actually expended therefrom for extensions, improvements, and betterments. *In Re Canton Electric Co. (Ohio)* 349.

12. A telephone company, upon petitioning for authority to issue \$9,250 of its common capital stock, and to distribute the same among its stockholders in lieu of money which had been expended from income account upon additions and improvements, was authorized to issue and sell \$1,600 of its common capital stock at not less than par for the purpose of reimbursing its income account for such expenditures of this nature as had been made within five years next preceding the filing of the petition, and was further authorized to distribute the fund so arising as a dividend on its outstanding stock. *Re Swanton Home Teleph. Co. (Ohio)* 483. .

13. A telephone company was authorized to issue its 6 per cent preferred capital stock, it appearing that the same was reasonably required for the reimbursement of its treasury for money actually expended from income for the acquisition of property, and the construction, completion, extension, and improvement of its system and facilities. *Re United Teleph. Co. (Ohio)* 557.

— Refunding obligations.

14. A quasi municipal corporation was authorized to issue its 4 per cent fifteen-year coupon bonds, to the total amount of \$100,000, the proceeds to be used to pay an issue of its bonds in equal amount, the sale to be to the highest bidder, provided, however, that any excess in the proceeds of such sale, which should not be needed or used for the

SECURITY ISSUES—*continued.*

purposes outlined in the petition, including such sums as might be realized for premiums, should be held by the petitioner for such application to the costs of the permanent additions to its property as the Commission should thereafter approve. Re Kennebec Water Dist. (Me.) 1020.

15. A telephone company was authorized to execute a first mortgage to secure \$100,000 par value of bonds, and to issue at that time \$88,000 par value of said bonds, \$75,000 of the proceeds therefrom to be used to refund obligations incurred for construction, extension, or improvement of or addition to its facilities. Re National Teleph. & Electric Co. (Ill.) 872.

16. The issue by an electric light company of 2,500 shares of new capital stock at \$185 per share was approved, the proceeds to be applied to the payment and cancelation of an equal amount of the obligations of the company, represented by its promissory notes outstanding on a specified date, where it appeared that the net (uncapitalized) expenditures for additions to plant prior to such specified date exceeded the amount which would be realized from the sale of such stock. In Re United Electric Light Co. (Mass.) 341.

17. A railroad company was authorized to issue first and refunding 5 per cent mortgage bonds to the par value of \$570,000 for the discharge or lawful refunding of obligations incurred for the acquisition of property and the construction, extension, and improvement of and addition to its facilities. Re Peoria R. Co. (Ill.) 804.

18. A gas and electric company was authorized to issue \$4,000,000 par value one-year 5 per cent gold notes to be sold at not less than 98 per cent of par, to execute a trust agreement securing the same, and to pledge \$10,000,000 par value of its bonds as security therefor, the proceeds of said notes to be used to refund a like amount of a previous issue of \$7,000,000 of notes, where it appeared that under the trust agreement \$3,000,000 of said previous issues of notes were to be paid off at once out of funds then available from the sale of preferred stock, and that one half of the \$10,000,000 of bonds would subsequently be canceled, and were to be used as collateral because of the desire that they be placed in escrow until canceled. Re Pacific Gas & Electric Corp. (Cal.) 792.

19. An electric corporation was authorized to issue 7,500 shares of its common stock of the par value of \$100 per share in return for the surrender to its treasury of a like amount of outstanding preferred stock. Re Mt. Whitney Power & Electric Co. (Cal.) 586.

20. Permission was given a public utilities company to issue an 8 per cent promissory note for \$16,000, payable two years after date in lieu of a note of the same amount issued without the required consent of the Commission. Re Escondido Utilities Co. (Cal.) 1071.

21. A railroad company was authorized to issue its first mortgage 4 per cent bonds to the face value of \$2,006,124.12, to reimburse its treasury for moneys expended for the acquisition of property and the construction, completion, extension of, and addition to, its facilities. Re Chicago G. W. R. Co. (Ill.) 800.

SECURITY ISSUES—continued.

22. A railroad company was authorized to increase its capital stock from \$100,000 to \$200,000 in order to retire bonds to the amount of \$75,000 and to capitalize the sum of \$25,000 invested in additions to roadbed and equipment. In *Re Military Post Street R. Co.* (Vt.) 330.

23. A railroad company was authorized to issue its corporate bonds for the reimbursement of its treasury for certain construction expenditures, and for the acquisition of a certain completed railway line outside of the state, and for the refunding of certain equipment trust notes, provided said bonds be sold for money only, at not less than 75 per cent of the par value thereof, and that the proceeds of such sale be used first for said construction and acquisition costs, and the surplus applied to the refunding of said notes. In *Re Minneapolis, St. P. & S. Ste. M. R. Co.* (Mich.) 166.

—New construction and additions.

See also *supra*, 13.

24. A telephone company was authorized to issue \$88,000 par value of bonds, \$12,500 of the proceeds therefrom to be used for construction, extension, or improvement of or addition to its facilities. *Re National Teleph. & Electric Co.* (Ill.) 872.

25. A gas company was authorized to pledge \$65,000 par value of an issue of \$240,500, three-year 6 per cent gold notes previously authorized, to secure three promissory notes aggregating \$42,812.15, which latter notes had been used to pay for the construction of pipe lines. *Re Southern Counties Gas Co.* (Cal.) 741.

—Acquisition of property.

See also *supra*, 21.

26. A railroad company was authorized to issue two promissory notes aggregating \$58,000, bearing interest at 6 per cent per annum, and to mortgage certain real estate as security therefor, the notes to be substituted for notes of a like amount theretofore issued without authority in part payment for real estate for its terminals. *Re Oakland, A. & E. R. Co.* (Cal.) 643.

—Overhead expenses.

27. A waterworks company was authorized to issue capital stock and bonds to a specified amount for the payment of organization, legal and engineering expenses, and for the construction and equipment of a waterworks system. *Re Chardon Waterworks Co.* (Ohio) 554.

—Floating indebtedness.

28. A water company was authorized to issue \$37,000 par value of common stock out of a total authorized issue of \$48,500, the proceeds therefrom to be used in paying off floating indebtedness incurred by the company on account of extensions and betterments to the plant, and to reimburse the treasury for money expended out of operating revenue within the last five years in making betterments and extensions to the property which were properly chargeable to capital account. *Re Linton Water Co.* (Ind.) 540.

SECURITY ISSUES—*continued.*— **Deficiency in sale of securities.**

29. A telephone company was authorized to issue \$88,000 par value of bonds, \$650 of the proceeds therefrom to be used to make up discount or deficiency, if any, so that the sale of said bonds shall net not less than 95 per cent of par. Re National Teleph. & Electric Co. (Ill.) 872.

30. A railroad company was authorized to issue its first mortgage 4 per cent bonds to the face value of \$741,875.88, to provide for the discount or deficiency, if any in the amount realized from the sale of an authorized issue of bonds to refund lawful obligations incurred on the capital account. Re Chicago G. W. R. Co. (Ill.) 800.

— **Operating expenses.**

31. Portions of the salaries of the regular employees of a gas company whose principal duty is the maintenance and operation of the plant and system should not be charged definitely to construction, and thereby included as capital charges for a proposed bond issue, when the company was, at the time of such construction, operating as a going concern, unless the respective salaries are carefully divided between construction and operation, and carried on the books in this way. Re Standard Gas Co. (N. J.) 632.

32. Authority was refused a gas company to pledge part of an issue of gold notes previously authorized to secure certain promissory notes, where it appeared that the latter notes had been given in payment for operating expenses. Re Southern Counties Gas Co. (Cal.) 741.

— **Replacements.**

33. Stock should not be issued to cover the amount expended for the retirement of an old water gas set and other items connected with it. Re Standard Gas Co. (N. J.) 632.

— **Purposes already provided for.**

34. Permission was refused an interurban railway company to issue \$2,000 par value of capital stock and \$14,700 par value of bonds to cover cost of new equipment and administration, engineering, legal, and contingent costs during construction, where it appeared that the items in question had been amply provided for by security issues previously authorized except the item of contingent costs, which the Commission held need not be anticipated but should be met as it may occur. Re Fresno Interurban R. Co. (Cal.) 787.

35. A promotion charge for which allowance has been made in security issues previously authorized cannot be converted into something else by a mere change of nomenclature. Re Fresno Interurban R. Co. (Cal.) 787.

Amount.

36. A public-service corporation was granted the authority to pledge its first mortgage 6 per cent gold bonds as collateral security for a \$29,000 note issue in such ratio that the face value of the notes issued should be not less than 66⅔ per cent of the face value of the bonds. Re Escondido Utilities Co. (Cal.) 744.

SECURITY ISSUES—*continued.*

37. A gas company having a capital stock of \$150,000 with a reproductive value, exclusive of going-concern value, of approximately \$274,982, was authorized to issue its 6 per cent corporate bonds to the par value of \$400,000, secured by first mortgage or deed of trust, \$140,000 of which were ordered to be issued immediately and sold at not less than 90 per cent of the par value, the remainder to be held in the treasury unpledged or unencumbered, subject to the order of the Commission, the proceeds of the \$140,000 issue to be used to discharge a bonded indebtedness of \$30,000 on its property, and for other lawful purposes of the corporation. *Re Niles Gaslight Co. (Mich.)* 543.

—**Ability to pay dividends.**

38. An electric company was authorized to issue 4,180 shares of 7 per cent cumulative preferred capital stock, of the par value of \$100 per share, it appearing that the company could, without trouble, pay the dividends thereon, the proceeds of such stock to be devoted to the payment of certain outstanding notes and accounts, with the exception of the sum of \$100,000 which was ordered to be held in the treasury subject to the further order of the Commission. *Re Mt. Whitney Power & Electric Co. (Cal.)* 586.

—**Value of property covered by.**

39. The Commission cannot authorize the issuance of securities beyond the value of a public service company's property, although it appears that the company has actually expended in the plant a larger sum than it asks to capitalize. *Re Edison Electric Illuminating Co. (Md.)* 812.

40. The Commission refused to allow an increase of the capital stock of a horse car company to provide for the entire cost of electrification and reconstruction, where it appeared that a portion of the expenditure had been for replacements, but so limited the increase as to make the entire capitalization correspond substantially to the appraised value of the reconstructed property, including a 10 per cent allowance of structural cost for omissions, contingencies, and contractor's profit. *Re Phillipsburg Horse Car R. Co. (N. J.)* 820.

41. A light, heat, and power company was authorized to issue \$8,200 of stock where an appraisal by the Commission's engineers showed that the original cost and present value of its properties were in excess of the sum of \$8,000, and where it further appeared that the present owners had actually paid \$8,000 for the properties, and had expended \$200 more for meters. *Re Arlington Light, Heat & P. Co. (Neb.)* 547.

42. A water company was authorized to issue its stock and bonds in the total amount of \$35,000 where the evidence showed that the total cost of construction of its properties was in excess of the amount of such issue. *Re Loogootee Water Co. (Ind.)* 534.

43. A railroad company incorporated for the purpose of purchasing a railroad from an individual was authorized to issue in payment therefor \$300,000 par value of its stock and \$200,000 par value of 6½ per cent promissory notes secured by mortgage covering all of the

SECURITY ISSUES—*continued.*

property, where from findings in a previous proceeding involving the same property it appeared that the reproduction cost less depreciation of the property was \$430,052.55, and that the net earnings of the railroad were sufficient to provide for the notes without impairing its capital or efficiency, and without necessitating increased rates. *Re Henshaw (Cal.)* 749.

44. A telephone company, upon application for authority to issue \$75,000 of a series of 20-year 6 per cent gold bonds, secured by first mortgage on all its property and plant, was authorized to issue such bonds in the amount of \$50,000, on condition that the same should be sold for cash plus accrued interest, it appearing to the Commission without a valuation of the plant that the value thereof exceeded the amount of the company's bonds outstanding, plus those for which authority was asked, and that the purposes of the issue were for the payment of debts created wholly on account of new construction and equipment. *In Re Pike County Teleph. Co. (Ind.)* 335.

—**Proportion of bonds to stock.**

45. Bonds and stock should be issued in the proportion of approximately \$2 face value of bonds to \$1 par value of stock. *Re Fresno Interurban R. Co. (Cal.)* 787.

Sale price.

Sale to highest bidder, see *supra*, 14.

See also *supra*, 16, 23, 29.

46. An authorized issue of first-mortgage 4 per cent bonds of the face value of \$2,748,000 was ordered to be sold so as to net the company not less than 73 per cent of the principal and accrued interest thereon. *Re Chicago G. W. R. Co. (Ill.)* 800.

47. An authorized issue of first and refunding 5 per cent mortgage bonds was ordered to be sold so as to net the company not less than 85 per cent of the par value of the principal and accrued interest thereon. *Re Peoria R. Co. (Ill.)* 804.

48. An authorized issue of bonds to the sum of \$26,500 was ordered sold, at the highest price obtainable, but at not less than 90 per cent of their par value. *Re Chardon Waterworks Co. (Ohio)* 554.

49. A water company was authorized to issue \$37,000 par value of common stock at not less than 90 per cent of par. *Re Linton Water Co. (Ind.)* 540.

50. A water company was authorized to issue \$5,000 of preferred stock to be sold at not less than 94 per cent of its par value. *Re Loogootee Water Co. (Ind.)* 534.

51. A telephone company was authorized to issue \$88,000 par value of first-mortgage loan gold bonds bearing interest at 6 per cent payable semiannually, maturing January 1, 1935, and redeemable at any interest date after January 1, 1920, at par plus accrued interest, said bonds to be sold at not less than 95 per cent of par plus accrued interest. *Re National Teleph. & Electric Co. (Ill.)* 872.

52. An authorized issue of 7 per cent cumulative preferred stock of the par value of \$100 per share was ordered to be sold at not less than \$95 per share. *Re Mt. Whitney Power & Electric Co. (Cal.)* 586.

SECURITY ISSUES—*continued*.

53. An authorized 8 per cent promissory note issue was ordered to be sold at not less than 96½ per cent of its face value. *Re Eseondido Utilities Co. (Cal.) 744.*

54. A water company was authorized to issue \$20,000 of common stock to be sold at par. *Re Loogootee Water Co. (Ind.) 534.*

55. A telephone company was authorized to issue its 6 per cent preferred capital stock on condition that the same be sold for the highest price obtainable, but for not less than the par value thereof. *Re United Teleph. Co. (Ohio) 557.*

56. An authorized issue of capital stock of the total par value of \$20,000 was ordered sold at the highest price obtainable, but at not less than par. *Re Chardon Waterworks Co. (Ohio) 554.*

SERVICE.

- I. Jurisdiction and powers of Commissions.
- II. Extension of service.
- III. Abandonment of service.
- IV. Discrimination.
- V. Service of particular utilities.
- VI. Payment.

Division of costs of joint enterprise, see Apportionment, 9-13.

I. Jurisdiction and powers of commissions.

Jurisdiction of Commission over service of interstate carriers, see Commerce, 2-5a.

Restraint of utility disobeying order of Commission from soliciting service, see Fines and Penalties, 4.

1. The Idaho public utilities act confers authority upon the Commission to require the maintenance by any public utility of its service or facilities. *Re Oregon Short Line R. Co. (Idaho) 383.*

2. The Commission is without jurisdiction to require facilities for the interchange of traffic between land and water carriers. *Ashland v. Minneapolis, St. P. & S. Ste. M. R. Co. (Wis.) 519.*

3. The Commission has jurisdiction over a petition of the Trolley-men's State Conference Board for an order requiring the equipment of all street railway cars with vestibules and the heating of vestibules of closed cars in winter. *Re Trolley-men's State Conference Board (Conn.) 708.*

4. It is just as much the duty of the Commission to allow a reasonable reduction in facilities shown to be in excess of the needs of the public, as to order more service when it is shown to be inadequate. *Re Georgia R. & Power Co. (Ga.) 901.*

5. The Commission is without jurisdiction to require the relocation of telephone lines, although it appears that in order to secure adequate telephone service in conformity with rule 1 of the Standards for Telephone Service, August 13, 1914 (15 Wis. R. C. R. 1), it is necessary that such telephone lines paralleling respondent's subsequently constructed transmission lines be moved to the opposite side of the highway and made full metallic circuits, and that special precautions be

SERVICE—continued.

taken at all points where the transmission lines cross the telephone lines. *Platteville, R. & E. Teleph. Co. v. Lancaster Electric Light Co.* (Wis.) 298.

6. The Wisconsin Railroad Commission lacks jurisdiction and authority to compel a railroad to operate beyond its present stopping point a Sunday train operated only during the summer months as an excursion train, inasmuch as such operation constitutes a special service in addition to the number of trains regularly operated or required by statute, is a service which the railroad is not compelled to furnish, and which, if it does furnish, is wholly within its discretion as to time and extent of the service, and furthermore, as this service is not subject to the same liabilities as the regular train service. *Hughson v. Duluth, S. S. & A. R. Co.* (Wis.) 244.

7. No established service or "practice pertaining to the service" of any public utility can be varied, modified, or discontinued without the consent of the Commission. *Northeast Kansas Teleph. Co. v. Hiawatha Mut. Teleph. Co.* (Kan.) 1016.

II. Extension of service.

8. It is unnecessary that extensions of service shall be uniformly profitable, or that there shall be no unprofitable extensions. *Re Pacific Gas & Electric Co.* (Cal.) 722.

9. A public service corporation occupying an exclusive field should hold itself in readiness to make reasonable extensions to serve new districts. *Arizona Corp. Commission v. Pacific Gas & Electric Co.* (Ariz.) 996.

Gas.

10. To justify the Commission in ordering an extension of gas mains at distance of 540 feet where the estimated revenue was placed at \$27 per annum and the estimated cost of furnishing the service, including an allowance for return on the investment, at \$43.30, an amount of revenue would be required which would exceed by 50 per cent the estimated revenue to be obtained. *Sigrist v. Public Service Gas Co.* (N. J.) 1024.

11. A gas company was not required to extend its mains 540 feet in order to furnish complainant's residence with gas, it appearing that the estimated revenue was \$27 per annum and the estimated cost of furnishing the service, including an allowance for return on the investment, was \$43.30, the Commission not being of the opinion that such an extension would be reasonable or practicable, or would furnish sufficient business to justify its construction and maintenance. *Sigrist v. Public Service Gas Co.* (N. J.) 1024.

12. In the absence of any showing as to the merits of prior requests for extensions, an extension of service well within the reasonable service area of a gas company, and admitted by it to be necessary, was ordered without awaiting the completion of such extensions requested prior thereto. *Hardison v. Los Angeles Gas & Electric Corp.* (Cal.) 1.

Gas and electric.

13. An application to require a gas and electric company to extend

SERVICE—continued.

its service to certain consumers at its own expense was of necessity considered primarily as an individual local problem, owing to the fact that the evidence submitted was confined to the costs of, and probable revenue from, the particular extension. *Warren v. Pacific Gas & Electric Co. (Cal.)* 702.

14. An extension of service contract between a gas and electric company, and certain prospective customers, by which the company and the customers each agree to construct a portion of the lines, the customers guarantying a yearly minimum return, was approved until such time as the cost and conditions of the service should be investigated by the Commission. *Re Pacific Gas & Electric Co. (Cal.)* 722.

15. A gas and electric company was ordered to extend its mains and service wires into a newly developed addition within the city limits where fourteen residences of a substantial type were either in the course of construction or completed, it appearing that the construction of additional houses and occupancy of the present houses would be delayed, if not absolutely defeated, unless such service was rendered. *Arizona Corp. Commission v. Pacific Gas & Electric Co. (Ariz.)* 996.

Water.

16. The contention of an aqueduct company that it will not be able to sell securities for the purpose of raising funds for the making of extensions to its mains, required of it under an ordinance, will not be considered where it is not shown that the company is unable to make the extensions from its funds on hand or other sources. *Glen Rock v. Berger Aqueduct Co. (N. J.)* 937.

Telephones.

17. The mere connection of a telephone within a certain territory is not an extension of the lines of the company within such territory, where the line had been previously constructed and connected for the use of a former patron, to whose property interests the present user has succeeded, and for whose use the new connection was made. *Hughson Teleph. Co. v. Pacific Teleph. & Teleg. Co. (Cal.)* 867.

18. A telephone company undertaking to furnish service in a given territory will not be compelled to build an unreasonable distance in order to give such service, what is a reasonable distance depending upon the facts in each case. *Re Teleph. Co. (S. D.)* 1032.

Street railway.

19. An extension of service by a street railroad company and the extension of the fare zone will not be compelled by the Commission on the condition of compensation being made to the company, as the matter of extension for compensation is one for private treaty. *T. J. Hooper Realty Co. v. United R. & Electric Co. (Md.)* 339.

20. A petition to extend the service of a street railroad company was dismissed where the extension asked was beyond the extreme end of the existing city fare zone, and the Commission had adopted a policy of not interfering with the boundaries of the fare zone pending investigation of company's affairs; and where it further appeared that the

SERVICE—continued.

section requesting the service already had the benefit of three other car lines. *T. J. Hooper Realty Co. v. United R. & Electric Co. (Md.)* 339.

III. Abandonment of service.

21. A railway company was authorized to remove its rails on a branch line, notwithstanding the fact that a prospective individual shipper would be inconvenienced thereby, where it was found upon inspection that little or no business existed there, that the track was in unsafe condition, and that extensive repairs would be required upon the roadbed and bridges. *Re Tremont & G. R. Co. (La.)* 457.

21a. Authority was denied a telephone company to abandon one of its lines $7\frac{1}{2}$ miles long, for the reasons that the company had never made any effort to secure new and additional subscribers, that the line, when built, became impressed with a public service, that a part of the public insisted that it required the service, and that there seemed to be a possibility of increasing its revenues by securing new and additional patronage, although it appeared that the applicant owned the poles in such line, only $2\frac{1}{2}$ miles of the distance, that the line was depreciating, and that the present revenue was insufficient to furnish proper maintenance, depreciation, and a reasonable earning on the investment. *Re Haven Teleph. Co. (Kan.)* 1014.

IV. Discrimination.

In rates, see Rates, 26-56, 117-124, 165-171.

Interurban railway.

22. Failure to stop a limited interurban train at a village is not discriminatory where it appears that, on the basis of volume of traffic, several other stations might have an equal claim to such service. *Chromaster v. Milwaukee Northern R. Co. (Wis.)* 834.

Railroads.

23-24. A railroad company was ordered to furnish a reasonable morning hour service during winter months to shippers of milk and cream from a designated point, comparable in convenience with that accorded to other shippers located on the same line, where it appeared practicable to give such service. *Milwaukee Milk & C. Shippers Assn. v. Chicago & N. W. R. Co. (Wis.)* 263.

*V. Service of particular utilities.**Water.*

Extension of, see *supra*, 16.

Payment for, see *infra*, 119, 129, 145.

25. A water company cannot be held responsible for the protection of water and pipes upon a consumer's premises from freezing on the theory that they have been installed by persons interested in the company, since the conditions within the house are entirely beyond the control of the company and are within the control of the occupant. *In Re Watson (N. J.)* 307.

—Shutting off water.

26. A requirement that a consumer notify a water company when

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the house is to be vacated and the water shut off is reasonable. In *Re Watson* (N. J.) 307.

27. Turning on and shutting off water should be done by a representative of the company if the responsibility regarding the meter is to be transferred from the owner to the company during the period of shut-off. In *Re Watson* (N. J.) 307.

28. The practice of a water company in shutting off water at night for the purpose of making new connections or changes in the distribution system is not proper. In *Re Watson* (N. J.) 307.

29. A rule of a water company providing that water may be shut off without notice is reasonable, but in that practice the company is not justified in omitting the notification of its customers when water is to be shut off, unless conditions absolutely preclude such notice. In *Re Watson* (N. J.) 307.

Irrigation.

30. An irrigation company was ordered to assume control and maintenance of irrigation laterals in a certain section formerly controlled and maintained by private landowners, it appearing that public necessity would be best subserved thereby; but such order was made upon condition that an agreement be signed by the owners of 75 per cent of the land affected to pay the actual cost, not exceeding 85 cents per acre for the first two years, 50 cents during the third and fourth years, and 25 cents during each subsequent year. *Porter v. Fresno Canal & Irrig. Co.* (Cal.) 695.

Gas.

Extension of, see *supra*, 10-15.

Payment for, see *infra*, 147.

Natural gas.

Payment for, see *infra*, 131.

Electricity.

Extension of, see *supra*, 14, 15.

Payment for, see *infra*, 121, 133, 137, 143.

31. All corporations and persons furnishing electric service in the District of Columbia are required to obey and comply with the regulations for such service, prescribed by the Public Utilities Commission in Order No. 139, January 30, 1915, unless, upon application to the Commission, modifications or exemptions are authorized. *Re Electric Service* (D. C.) 527.

32. It is of interest both to an electric light and power company and to the public that rules of service should be published and definitely known. *Meek v. Consumers E. L. & P. Co.* (Mo.) 956.

33. An electric power rate schedule was approved which reserved in the company the option, in the case of new consumers, of supplying either single or three phase current to power installations of less than 3 horse power. *Monterey v. Coast Valleys Gas & Electric Co.* (Cal.) 725.

34. An electric lighting company was ordered to make such additions and tests as would render it able to supply its consumers with

SERVICE—*continued.*

reasonably adequate service, and to observe and comply with the adequate and serviceable standards ascertained and fixed by the Commission in the rules established by its order of August 9, 1913. *Re* Ladysmith Lighting Co. (Wis.) 1050.

35. Consumers cannot be required to endure poor service any longer than is absolutely necessary to complete the work of reconstruction, repair, and testing required to render an inadequate plant efficient. *Re* Ladysmith Lighting Co. (Wis.) 1050.

— Disconnection of service.

36. An electric light and power company should establish and publish a reasonable rule for discontinuing service. *Meek v. Consumers E. L. & P. Co.* (Mo.) 956.

37. A gas and electric company was allowed to substitute a rule which required one notice only to be mailed to delinquent consumers before disconnecting service, in place of its former rule requiring two such notices, on the ground that the expense incident to a second notice should not be incurred. *Re* Pacific Gas & Electric Corp. (Ariz.) 525.

— Heating.

38. An electric utility was found by the Idaho Commission to be rendering reasonably good service to the community which it served, notwithstanding the unsatisfactory character of its heating service, on the ground that electricity from an economic standpoint is too expensive to be used for heating purposes. *Re* Idaho Light & P. Co. (Idaho) 2.

— Transformers and lightning arresters.

39. An electric light and power company must, in Wisconsin, for the purpose of supplying service to a customer in a reasonably safe and reliable manner, install, at its own expense, a new transformer and lightning arresters, where a transformer previously installed by it just outside the customer's premises, and not protected by lightning arresters, was burned out, presumably as the result of an electric storm. *In* *Re* Bloomer Electric Light & P. Co. (Wis.) 171.

40. The Wisconsin statute which exempts utilities from the requirement of installing on consumer's premises any part of the facilities incident to service, except meters and appliances for measurement, does not apply to transformers not located on consumer's premises, and to lightning arresters, usually installed on the same pole as the transformer. *In* *Re* Bloomer Electric Light & P. Co. (Wis.) 171.

41. It is the duty of a public utility supplying electricity for light and power to provide such devices as transformers and lightning arresters as are necessary for the reasonable protection of the consumer and his property from electric storms and from current carried by high voltage transmission lines. *In* *Re* Bloomer Electric Light & P. Co. (Wis.) 171.

Telephones.

Powers of Commission, see *supra*, 5, 7.

Extension of, see *supra*, 17, 18.

Abandonment of, see *supra*, 21a.

SERVICE—continued.

Payment for, see *infra*, 120, 122-128, 130, 132, 135, 136, 138-142, 144, 146.

42. A rule of a telephone company that joint user shall include any and all service not specified by the main line listing, and that one main and one joint user may be served on one main line unless the main-line subscriber should desire the joint-user rate to cover his own additional business, was approved. *In Re Clark County Teleph. Co. (Wis.)* 359.

43. A free interchange of telephone service between different telephone companies by means of rural lines was disapproved, and rural-line subscribers receiving switching service were required to pay at least the actual cost of such switching, on the ground that while there may be some benefit to be derived from the free interchange of service, yet if indulged in to too great an extent it creates such congested conditions that the service loses its efficiency. *Re Teleph. Co. (S. D.)* 1032.

44. The present user of a telephone connection, who has succeeded to the property rights of a former patron, cannot be lawfully denied the right to service to which such former patron was entitled, on the theory that the present connection was a new one in violation of a territorial-partition contract by which the company has agreed not to continue service in the territory in which the connection was made. *Hughson Teleph. Co. v. Pacific Teleph. & Teleg. Co. (Cal.)* 867.

45. A telephone company was ordered to furnish complainant, having a flat-rate private branch exchange in its apartment houses, with a ringing trunk without additional charge, provided twenty of complainant's apartment house tenants contracted for service at direct line residence. *Olbiston Co. v. New York Teleph. Co. (N. Y.)* 1025.

46. A telephone company was ordered to discontinue the practice of allowing traffic from lines, other than its own, to be switched into the exchange of its connecting company, and thence to the connecting company's subscribers, where there was a contract for free interchange of service. *Mahannah v. Arnett Teleph. Co. (Okla.)* 1029.

—Ownership of securities or appliances by subscriber.

47. Telephone companies were ordered to discontinue the practice of requiring an intending subscriber to purchase stock before service would be given him, on the ground that such practice is unnecessary, impractical, and works hardship on the public. *Re Teleph. Co. (S. D.)* 1032.

48. Telephone companies were ordered to discontinue the policy of permitting individual subscribers or stockholders to own any part of the equipment going into the construction of a telephone plant, on the ground that it is contrary to telephone practice for the reason that it makes it impossible for the company properly to maintain, operate, or police its lines, and that it often creates dissension and tends to cause discrimination in the practices of the company. *Re Teleph. Co. (S. D.)* 1032.

49. Telephone companies were ordered to purchase of subscribers, and to own, all telephone equipment, stock issues to be re-arranged on the basis of the new investment. *Re Teleph. Co. (S. D.)* 1032.

SERVICE—*continued*.**—Right of subscriber to select service.**

50. Each subscriber to telephone service has a legal right to select the class of service which shall be furnished him, whether main or party line, either at the time he installs his telephone or at any time while the relation of subscriber exists. *Re Beresford Teleph. Co. (S. D.)* 515.

—Classification.

51-52. The use of a telephone instrument is the criterion by which the classification of service should be made, subject, however, to the qualification that where a subscriber maintains a business telephone in his office and a residence telephone in his house, the fact that much business is transacted over the residence telephone does not prevent its being classified as a residence telephone, because the subscriber is already paying for a business telephone at his place of business or office. *Centerville Teleph. Co. v. Sheppard (S. D.)* 512.

53. A telephone instrument installed in the residence of a veterinary surgeon, his business being conducted on the premises, must be classified as a business telephone and take the business telephone rate when it appears that such telephone is used for business purposes, although he also uses another subscriber's business telephone, under a private arrangement for business purposes, but is not a regular business subscriber. *Centerville Teleph. Co. v. Sheppard (S. D.)* 512.

—Physical connection.

54. The Commission cannot, under the Ohio Statutes, order a telephone company to restore physical connection between its lines and those of other companies, where, by reason of different connections established by it, all of the localities served by such other companies have adequate interchange of service, and all of the subscribers of the complaining companies can reach all of the subscribers of the company refusing to re-establish the former connection; and it is immaterial that the connection asked for would be more direct. *Athens County Home Teleph. Co. v. Jackson County Home Teleph. Co. (Ohio)* 312.

55. Under the Oklahoma Constitution, the Oklahoma Corporation Commission may prescribe rules and regulations for the physical connection of the lines of a local telephone company with those of another telephone company, furnishing local and long distance toll service in and through the same town, so that long distance messages may be received from and transmitted to the rural and exchange subscribers of the local company. *Darnell v. Pioneer Teleph. & Teleg. Co. (Okla.)* 80.

56. An interchange of telephone communication and service by means of lines and circuits already forming a physical connection between the exchanges of a telephone corporation and a mutual rural telephone company was ordered, the toll rate to be charged and collected, as well as the division to be made between the parties, to be based upon the toll schedule of the Michigan Independent Traffic Association. *Reading Cent. Teleph. Co. v. Fayette Rural Teleph. Co. (Mich.)* 56.

—Transfer of money.

57. A telephone company was authorized to discontinue the practice

SERVICE—continued.

of transferring money by telephone, on the ground that that character of business is not a function of telephone service, it appearing that whatever business of that character had been done was for accommodation. *In Re Telephone & Teleg. Co. (La.)* 209.

— Directory.

See also *Telephones*, 23.

58. A rule of a telephone company that each main, party, and rural telephone shall be entitled to one listing in the directory, was approved. *In Re Clark County Teleph. Co. (Wis.)* 359.

59. A rule of a telephone company that in all cases the telephone instrument shall remain in place without service, or hold its original listing in the directory, was approved. *In Re Clark County Teleph. Co. (Wis.)* 359.

60. A telephone company was ordered to give apartment house tenants, the lines from whose rooms or offices ran through the apartment house, private branch exchange, separate telephone directory listings. *Olbiston Co. v. New York Teleph. Co. (N. Y.)* 1025.

— Exchange limits.

61. A town telephone exchange and the rural lines owned and operated by it, or rural lines connected with it on the switching basis, constitute an exchange or unit for telephone service. *Re Teleph. Co. (S. D.)* 1032.

62. A rule of a telephone company that the exchange limits shall be the village or city limits where exchanges are operated was approved, it being taken to indicate merely the division line between local and rural service, and not that a toll will be charged between the various cities and villages. *In Re Clark County Teleph. Co. (Wis.)* 359.

63. When a rural line is connected to an exchange, it becomes a part of the exchange, the same as if in the local exchange area. *Mahanah v. Arnett Teleph. Co. (Okla.)* 1029.

— Pay stations.

64. Telephone pay stations were ordered to be discontinued in order to avoid discrimination among subscribers, and to save investment in equipment, and to save the time of operators in supervising, where it appeared that only a small part of the business telephones were equipped with coin boxes, and that these returned no revenue to the company. *Coady v. La Crosse Teleph. Co. (Wis.)* 565.

65. A telephone company rendering inadequate service was ordered to establish within a reasonable time a public toll station at a point on a through line, such station to be so situated that it would be convenient for local and transient toll patrons, as provided for in the Commission's Standards of Telephone Service Rules, August 13, 1914. *Grantman v. Theresa Union Teleph. Co. (Wis.)* 103.

— Adequacy in general.

66. When a public service corporation is serving the public, and the rates charged for such service are in and of themselves fair and reasonable, the company must, in exchange, render dependable service.

SERVICE—continued.

Shields Valley Commercial Club v. Mountain States Teleph. & Teleg. Co. (Mont.) 945.

67. It is the duty of a telephone company to render adequate service, at its own expense if necessary, although a high tension line, subsequently constructed, interferes with the adequacy of its service and the operation of its telephone line. Ebenezer Teleph. Co. v. Milwaukee Light, Heat, & Traction Co. (Wis.) 174.

68. The fact that a branch line of a telephone company in the nature of a feeder does not of itself pay, while the main line is enjoying prosperity, is not a good, and sufficient reason for nondependable service. Shields Valley Commercial Club v. Mountain States Teleph. & Teleg. Co. (Mont.) 945.

— Through service.

69. A telephone company rendering inadequate service was ordered to construct within a reasonable time and to maintain between two points a through line along which few, if any, subscribers' instruments are installed, as required by the Commission's Standards of Telephone Service Rules, August 13, 1914. Grantman v. Theresa Union Teleph. Co. (Wis.) 103.

— Standards.

70. A telephone company was ordered to comply with a reasonable time with the Commission's Standards for Telephone Service Rules (August 13, 1914) requiring such construction as will eliminate cross-talk. Pospichal v. Muscoda Mut. Teleph. Co. (Wis.) 99.

71. A telephone company, having more than twelve subscribers on certain of its rural lines was ordered to rectify the resulting service conditions by increasing the number of its lines in compliance with the Commission's Standard of Telephone Service Rules (August 13, 1914), providing that the number of subscribers on any line shall not be greater than that consistent with adequate service. Pospichal v. Muscoda Mut. Teleph. Co. (Wis.) 99.

72. A telephone company was required to connect subscribers with the line which is geographically best adapted to their service, when additional lines were constructed to relieve overloading as required by the Commission's Standard of Telephone Service Rules. Pospichal v. Muscoda Mut. Teleph. Co. (Wis.) 99.

73. A telephone company rendering inadequate service was ordered to employ such additional help as would enable it promptly to investigate and remove all causes of complaint, as required by the Commission's Standards of Telephone Service Rules, August 13, 1914. Grantman v. Theresa Union Teleph. Co. (Wis.) 103.

74. A telephone company rendering inadequate service was ordered to employ such additional help as would enable it to make sufficient and regular service tests and inspections of its lines and apparatus as required by the Commission's Standards of Telephone Service Rules, August 13, 1914. Grantman v. Theresa Union Teleph. Co. (Wis.) 103.

— Hours of service.

75. A telephone company operating a local exchange and rural party

SERVICE—continued.

lines was ordered to increase its week-day service from 7 A. M.—9 P. M. to 6 A. M.—10 P. M., and on Saturdays 6 A. M.—11 P. M. *Re Beresford Teleph. Co. (S. D.)* 515.

76. A telephone company operating a local exchange and rural party lines was ordered to increase its Sunday service furnished from 8 A. M. to 12 M. by the addition of the hours 1 P. M. to 7 P. M. *Re Beresford Teleph. Co. (S. D.)* 515.

77. A telephone company affording night service for emergency calls only was ordered to answer all calls coming into the switch board during the night, and furnish service promptly, on the ground that the subscriber, and not the telephone company or the switch-board operator, is the proper person to determine when an emergency exists. *Re Beresford Teleph. Co. (S. D.)* 515.

—Time consumed in answering call.

78. A telephone company was ordered to improve local exchange operating conditions, to take care of increased business, it appearing from inspection that the time consumed in getting the operator to answer calls averaged 12 seconds per call on 10 calls, and 34 seconds per call on 21 calls. *Burnett v. Cushing Teleph. Co. (Okla.)* 638.

—Busy hours.

79. A telephone company was ordered to construct an additional trunk line, where it appeared that 10 per cent of trunk calls outgoing from a certain exchange were not completed during the busy hour on account of busy trunk lines. *Coady v. La Crosse Teleph. Co. (Wis.)* 565.

Street railways — Through service.

Powers of Commission, see *supra*, 3.

Extension of, see *supra*, 19, 20.

80. A relatively small capital expenditure should not stand in the way of necessary street railroad through car service. *Twenty-Second Ward Advancement Asso. v. Milwaukee Electric R. & Light Co. (Wis.)* 168.

81. A street railroad will be permitted to terminate its through service at a specified point, where it appears that beyond such point its traffic is not such as to warrant a considerable expenditure to make such operation possible. *Twenty-Second Ward Advancement Asso. v. Milwaukee Electric R. & Light Co. (Wis.)* 168.

—Rush-hour service.

Reduction of rates during rush hours, see *Rates*, 25; *Valuation*, 71.

82. A street railroad company was ordered to operate through cars between certain designated points in the city of Milwaukee during the morning and evening rush hours, in accordance with the standard of rush-hour service fixed in the general service order of the Commission, although capital expenditure was necessary for the installation of track connections to make such service possible, where the Commission believed that the traffic would fully justify the service when patrons became accustomed to the new arrangement. *Twenty-Second Ward Advancement Asso. v. Milwaukee Electric R. & Light Co. (Wis.)* 168.

83. The facilities of an urban street railway company are fairly

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reasonable where the peak point loads do not exceed 20 per cent of the seating capacity for a continuous period of not more than thirty minutes, with schedules operated on not exceeding a ten-minute headway, extending over such a reasonable period as to show that the traffic is permanent. *Re Georgia R. & Power Co. (Ga.) 901.*

84. Curtailment of expenses necessitated by decrease in travel, and consequent falling off of revenues of a street railway, owing to a general business depression, should not necessarily be made by taking off cars operated during "rush hours," since widespread business-depression affects travel for pleasure and on Sundays and holidays more than it does travel necessary for persons to get to their work or places of business. *Re Georgia R. & Power Co. (Ga.) 901.*

— Seats for passengers.

See also *infra*, 109.

85. Adequate urban street railway service does not mean that every passenger on every car operated should be furnished a seat, but that the company should provide reasonable seating accommodations in its cars for such patrons as desire them, in so far as it can reasonably anticipate and measure the volume of traffic to be taken care of. *Re Georgia R. & Power Co. (Ga.) 901.*

— Heating of cars.

86. A municipal ordinance providing that the temperature of the cars of a street railway company which is principally engaged in interstate commerce shall never be permitted to be below 50 degrees Fahrenheit must be deemed to be invalid as unreasonable, where the undisputed testimony shows that it is impossible in the operation of the cars to keep them uniformly up to this temperature, owing to the opening and closing of doors, and other interferences that make it impracticable. *South Covington & C. Street R. Co. v. Covington (U. S.) 231.*

87. Street car companies were not required to install in their cars vestibule heaters for winter use, where it appeared that such equipment would not be so much for the health of the employees as for their comfort, and that in addition to the cost of installation and maintenance, the amount of current required and additional operating cost on account of extra power consumed would be considerable. *Re Trolley-men's State Conference Board (Conn.) 708.*

— Vestibules.

88. Street car companies were not required to equip their cars with vestibules or wind shields where it appeared that such equipment was not so much for the safety of the public or of the employees as for the comfort of the employees, and that the cost of installation would be considerable. *Re Trolley-men's State Conference Board (Conn.) 708.*

89. The expense alone of installing vestibules and heaters in street cars will not be controlling upon the Commission, if there is also involved a question of public safety. *Re Trolley-men's State Conference Board (Conn.) 708.*

SERVICE—*continued*.— **Curtailment of car service.**

Power of Commission to authorize, see *supra*, 4.

90. A street railway company, upon showing a large decree in its revenues owing to a general business depression, is entitled to relief from expense of all service in excess of the reasonable needs of the public. *Re Georgia R. & Power Co. (Ga.)* 901.

91. The Commission, in investigating the question whether a street railway company is supplying excessive service, will not proceed upon the theory that a decrease in the use of all the lines of the system, as a whole, justifies less service on any individual line, but will ascertain service conditions, facilities, and uses on each individual route, and will pass upon each without reference to other routes in the system. *Re Georgia R. & Power Co. (Ga.)* 901.

92. A street railway company was permitted to revise certain of its schedule and service so as to reduce its existing service, which appeared to the Commission to be excessive, owing to a falling off in traffic and a consequent decrease in revenues, due to general business depression; but was ordered to continue existing schedules and service on certain lines, where a reduction asked for would render the service inadequate; and was further ordered to extend rush hour service on one line, where the needs of the public required it. *Re Georgia R. & Power Co. (Ga.)* 901.

Interurban railway.

Discrimination, see *supra*, 22.

93. The Commission will not interfere to any great extent with through train service on interurban railways, having in mind the purposes for which a limited service is operated, and the necessity of maintaining this type of service for the convenience and encouragement of through travel and for competition with similar service maintained by steam railroads. *Chromaster v. Milwaukee Northern R. Co. (Wis.)* 834.

94. That it would be difficult to restart interurban cars after stopping at a designated point, on account of the steepness of the grade, and that it would be dangerous to do so in the winter months, will not justify refusal to stop there in the summer months, where this can be done without jeopardizing the public or interfering with the maintenance of schedules, and where the public convenience requires it. *Bradford v. Wisconsin Traction, Light, Heat & P. Co. (Wis.)* 832.

Railroads.

Jurisdiction of Commission, see *supra*, 1, 2, 6.

Discrimination, see *supra*, 23.

Payment for, see *infra*, 148.

95. A reasonable necessity for an order requiring that an interchange track be arranged for direct connection between railway lines does not exist where it is shown that such connection would only have been utilized for twelve cars of freight in six months. *Railroad Commission v. Morgan's Louisiana & T. R. & S. S. Co. (La.)* 469.

96. It was recommended that the rules of a railroad with reference to the distance a flagman should go to protect his train from collision should be modified from requiring "a sufficient distance to insure full

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protection," to requiring "at least seventeen telegraph poles away from the place to be protected." In *Re Bangor & A. R. Co. (Me.)* 138.

97. The trap car is justified by modern business practice and provides a way for a shipper to get his freight economically handled, so long as he can load it in sufficient quantities to be economically received by the railroads. In *Re Order to all Railroad Cos. Operating in Oklahoma (Okla.)* 217.

98. The elimination of certain grade crossings was postponed because of the financial condition of the railroad company, and the company was ordered to install "automatic flagman" or automatic crossing signals at the crossings in question, for the immediate protection of travel. *St. Johnsbury v. Boston & M. R. Co. (Vt.)* 641.

99. A change of railroad schedule requiring shorter running time was not ordered effective until April 1st, on account of the difficulty of operating trains on schedule time during severe winter weather. *Nolan v. Chicago & N. W. R. Co. (Wis.)* 240.

—Adequacy of train service.

100. A railroad was ordered to operate a Sunday passenger train in each direction between specified points on a branch-line, where the existing service was inadequate, and the Commission felt that, after a reasonable period of trial, the operation of such a train should prove remunerative. *Blaine v. Chicago, M. & St. P. R. Co. (Wis.)* 266.

101. The Commission refused to require a railroad company to operate an additional passenger train daily between certain points, although the existing service was poor as compared with more densely populated communities, where it appeared that the additional service would cost \$49,000 per year, and that the total ticket revenue for the area of service was only \$52,124.73 and the cash fares collected amounted only to \$5,351.10. *Schmitt v. Chicago & N. W. R. Co. (Wis.)* 443.

102. The Wisconsin Railroad Commission will not order further service to communities receiving the full quantum, where it appears that the increased amount of business which the company would obtain from the operation of another train would fall short of the increased expense of operation, and it further appears that the service already furnished is adequate for the present needs of the communities. *Hughson v. Duluth, S. S. & A. R. Co. (Wis.)* 244.

103. The Commission will not relieve a railroad company from the duty of furnishing adequate train service, which the Commission considers to be the operation of at least one passenger train each way a day over the entire length of its line in the state, where it appears that the railroad is receiving a fair operating revenue, and has for years put back its earnings into properties without increasing its capitalization. *Ex parte Louisiana & N. W. R. Co. (La.)* 466.

104. A railroad company providing three trains a day, each way, between certain points, should be satisfactory to patrons of smaller towns and villages along its lines, especially where the company has been providing an additional train at a loss. *Lowrey v. Cleveland, C. C. & St. L. R. Co. (Ill.)* 717.

105. Connecting railroads were ordered to operate two trains which

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were scheduled at an important junction point only twenty-six minutes apart, so as to make connection, where it appeared that such an arrangement would not disrupt more important connections of either train, or create unfavorable operating conditions; and, further, that adequate service required such connection to be made. *Nolan v. Chicago & N. W. R. Co.* (Wis.) 240.

106. A small logging railroad, while holding itself out as a common carrier, is required to furnish reasonably adequate service at all times. *Horning v. Big Falls R. Co.* (Wis.) 826.

— Discontinuance of trains.

Suspension of service, see *infra*, 115, 116.

107. The Commission refuses to order a railroad company to reinstate a fourth passenger train each way between two points on its line, although the discontinued train has been in operation for ten years; it appearing that the curtailed service was better than that provided by other railroads, and that the additional service could only be furnished at a loss to the company. *Lowrey v. Cleveland, C. C. & St. L. R. Co.* (Ill.) 717.

108. The Commission refused to order the restoration of certain winter train service, where it appeared that there was a large deficit from general operation of a railroad company in the state, and that the trains in question fell far short of paying operating expenses during the winter season. *Morey v. Maine C. R. Co.* (N. H.) 819.

— Seats for passengers.

See also *supra*, 85.

109. A steam railroad company should provide sufficient equipment to handle all passengers and to provide them with seats regardless of distance traveled. *Lowrey v. Cleveland, C. C. & St. L. R. Co.* (Ill.) 717.

— Adequacy of station service.

110. Connecting railroads were ordered to provide a suitable building and proper approaches at a railway junction joint, where it appeared that the average daily passenger traffic was nearly four times the existing building's seating capacity, and freight and express had to be often placed in the passenger waiting room on account of the insufficiency of the freight room. *Frederick v. Chicago, St. P. M. & O. R. Co.* (Wis.) 356.

111. The replacement of a railroad station should be given prior consideration over other station expenditures, where the company admits that such station has long been inadequate. *New Richmond v. Minneapolis, St. P. & S. Ste. M. R. Co.* (Wis.) 447.

112. The contention of a railroad company that grade and other conditions make it impracticable to move its depot cannot outweigh the considerations of the traveling public going almost $\frac{1}{4}$ of a mile to a depot for all time to come. *Wolverton v. Atchison, T. & S. F. R. Co.* (Okla.) 825.

113. A railroad company was ordered to construct within a year, and to maintain, an adequate passenger station to replace one, admitted by the company to have long been inadequate, where it appeared that

SERVICE—*continued.*

the financial condition of the company did not warrant an expenditure therefor at the time of the order. *New Richmond v. Minneapolis, St. P. & S. Ste. M. R. Co. (Wis.)* 447.

114. The choice of the actual site for a railroad station is properly a function of the management of the railway company, and should not be interfered with unless it is established that adequate service or the safety of the public is endangered. *New Richmond v. Minneapolis, St. P. & S. Ste. M. R. Co. (Wis.)* 447.

— **Suspension of service.**

Abandonment of, see *supra*, 21.

Discontinuance of trains, see *supra*, 107, 108.

115. A railroad company will not be allowed to close or suspend traffic on account of snow interference, or snow slides alone, for any longer period than is absolutely necessary to remove the same. *Re Oregon Short Line R. Co. (Idaho)* 383.

116. A railroad company was given permission to suspend service on a branch line for a portion of the winter months if, on account of earth or rock slides, it would be hazardous to employees or passengers, in the judgment of the superintendent of the division, to operate trains, certain other facilities being ordered for the transportation of passengers, mail, express, and freight. *Re Oregon Short Line R. Co. (Idaho)* 383.

— **Telephone in stations.**

See also *Carriers*, 3.

117. The telephone company having in use the largest number of telephones at the local exchange has the largest number of subscribers, within the meaning of a Missouri statute requiring railroad companies to install and maintain in every railroad station where an agent is kept a telephone connected with the local exchange having the largest number of subscribers in city, town, or community in which the station is located. *Clay County Teleph. Co. v. Chicago, M. & St. P. R. Co. (Mo.)* 61.

118. A railroad company will not be allowed, under a mandatory statute requiring reasonably adequate telephone connections between its buildings and the local public telephone exchanges, to discontinue at its depot the telephone service of one company because it is a subscriber of another, where it appears that both telephone companies are serving a large number of subscribers, very few of whom are users of the service of both companies. *Farmers Mut. Teleph. Co. v. Chicago, R. I. & P. R. Co. (Kan.)* 303.

VI. Payment.**Periods of.**

119. A rule of a water company that bills for water furnished through meters to domestic consumers in residences shall be rendered quarterly, instead of monthly, was approved. *In Re Application of Kokomo Waterworks Co. (Ind.)* 301.

120. A rule of a telephone company that its rates are quoted for service extending over a period of one year, and that such rates are offered with the understanding that the company has facilities to provide

SERVICE—continued.

the service at the location desired, was approved. In *Re Clark County Teleph. Co. (Wis.)* 359.

Bills for service.

See also, *supra*, 119.

121. An electric lighting utility was ordered to have all bills state plainly the connected load of each consumer and the percentage considered active, in computing a rate based partly upon active load. *Re Ladysmith Lighting Co. (Wis.)* 1050.

In advance.

122. A rule of a telephone company which provided for payment of rentals two months in advance was held reasonable. In *Re Tri-County Teleph. Co. (Ill.)* 129.

123. The rule of a telephone company that payments for service for the first three months must be made in advance, and thereafter quarterly or monthly in advance, at the option of the subscriber, was approved. *Re Lafayette Teleph. Co. (Ind.)* 930.

124. A reasonable advance payment of telephone rentals was approved by the Commission as good practice. *Re Teleph. Co. (S. D.)* 1032.

125. A schedule of telephone rates for rural lines of \$17 per year if paid yearly in advance, and \$8.50 for each 6 months' period if paid in advance, and \$1.50 per month if paid monthly in advance, was approved. *Re Pukwana Teleph. Co. (S. D.)* 952.

— — Discount in case of.

See also *infra*, 130.

126. A farm telephone company, whose rates, payable yearly in advance, have yielded a reasonable return, was allowed to increase its rates 25 cents a month, provided a discount of 25 cents per month be made to subscribers who pay their rental charges six months in advance—the company being required to give subscribers fifteen days' notice of the date upon which the rentals fall due. *Re Lynch Teleph. Co. (Neb.)* 64.

127. A telephone company's rate schedule which provided for payment of farm bills six months in advance, with a discount of 25 cents per month for payment by the 30th of the month in which bill is rendered, and which provided for payment of switching service one year in advance, with a discount of \$1 for payment by the 30th of the month in which bill is rendered, was approved, it being assumed that the discount system would stimulate collections. *Re Maxwell & B. Teleph. Co. (Neb.)* 471.

Prompt payment.

128. Telephone companies should insist upon prompt payment of rentals. *Re Teleph. Co. (S. D.)* 1032.

129. A rule of a water company that bills for water furnished through meters to domestic consumers in residences shall be due at the office of the company on the first day of each quarter for the previous three months, and paid within ten days thereafter, was approved. In *Re Application of Kokomo Waterworks Co. (Ind.)* 301.

SERVICE—*continued*.

— Discount for.

130. A rule of a telephone company providing for a discount of 75 cents per year where payments for rural service are made one year in advance, and of 25 cents per half year where payments are made a half year in advance, the annual rate for such service being \$15, was approved. In *Re Clark County Teleph. Co. (Wis.)* 359.

131. A natural-gas rate schedule was approved, containing a provision for a discount for prompt payment of 2 cents per 1,000 cubic feet on bills paid on or before the 10th of the month following the reading of the meter. *Re Oblong Gas Co. (Ill.)* 598.

132. The following rule of a telephone company, that "bills for rental service are payable monthly at the office of the company, on or before the 15th day of the month in which the service is rendered, except that bills for rural exchange service, other than rural switching, may be paid quarterly on or before the 15th day of the second month of the quarter in which the service is rendered, and if so paid a deduction of 25 cents per month will be made,"—is approved as appearing to be reasonable and just. *Re Abingdon Home Teleph. Co. (Ill.)* 29.

133. An electric utility was ordered to bill all consumers at a gross rate, the difference between a gross rate and net rate of 1 cent per k. w. hr. being allowed to constitute a discount for prompt payment within ten days of the date of bill. *Re Ladysmith Lighting Co. (Wis.)* 1050.

— Penalty for failure to make.

See also *infra*, 139–141.

134. All public-service companies in Pennsylvania are ordered to set forth clearly in their posted and filed tariffs the rules, circumstances, and conditions under which penalties for failure to pay bills promptly are imposed and discounts for prompt payment allowed, and such rules are to be applied without discrimination. In *Re Discounts for Prompt Payment & Penalties for Delayed Payment of Bills (Pa.)* 327.

135. A rule of a telephone company that a penalty of 10 cents shall be charged if bills for local service are not paid by the 20th of the following month was approved. In *Re Clark County Teleph. Co. (Wis.)* 359.

136. A rule of a telephone company that its rates for local and rural service shall apply when payments are made on or before the 20th of the month following the month for which service is rendered, and that there shall be a penalty of 25 cents per month for delinquent payments for such service, was approved. In *Re Clark County Teleph. Co. (Wis.)* 359.

137. Flat-rate consumers of electricity were ordered to be assessed a 10 per cent penalty for nonpayment of account within ten days following the date of bill. *Re Ladysmith Lighting Co. (Wis.)* 1050.

138. A schedule of telephone rates for rural lines, providing a penalty of 10 cents a month if not paid within ten days after payments become due, was approved. *Re Pukwana Teleph. Co. (S. D.)* 952.

— — Discontinuance or refusal of service.

139. The rule of a telephone company that, upon failure to make ad-

SERVICE—continued.

vance quarterly payments by the 15th day of the first month of each quarter, service shall be discontinued, was approved. *Re Lafayette Teleph. Co. (Ind.)* 930.

140. The rule of a telephone company that, if monthly payments are not made on or before the 15th day of each month, telephone service shall be discontinued, was approved. *Re Lafayette Teleph. Co. (Ind.)* 930.

141. The rule of a telephone company that no person who has a delinquent account will be accepted as a subscriber until such account is paid, was approved. *Re Lafayette Teleph. Co. (Ind.)* 930.

Security.

142. A rule of a telephone company that a deposit or properly signed guaranty will be required from parties who are not known to the company to be responsible for the payment of service charges was approved. *In Re Clark County Teleph. Co. (Wis.)* 359.

143. An electric light and power company should establish a reasonable rule for personal security or guaranty deposit, since each consumer should pay the amounts he owes the company under reasonable rates. *Meek v. Consumers E. L. & P. Co. (Mo.)* 956.

144. Telephone companies were authorized to refuse service to a subscriber who fails or refuses to pay his rental until such time as proper guaranties are made that all future bills will be paid. *Re Teleph. Co. (S. D.)* 1032.

Enforcement of.

145. The clause in a water company's application for service which requires the customer to agree that the real estate to which the water is supplied shall be bound and liable for the use of same is unreasonable. *In Re Watson (N. J.)* 307.

146. Telephone companies were ordered to discontinue the practice of permitting its rentals or charges to become past due and run for an indefinitely long period, action in court to recover the amount due being open to them. *Re Teleph. Co. (S. D.)* 1032.

147. A gas company was ordered to discontinue its practice of setting prepayment meters for consumers in arrears at special prices, higher than the standard rate, where such special charges and classifications, rules and regulations relating thereto, had not been filed with the Commission and published in accordance with the public utilities commission law, although the consumers had agreed thereto and were few in number. *Re Western United Gas & Electric Co. (Ill.)* 1086.

148. A railroad company is justified in refusing to accept shipments of freight upon which the charges are not fully prepaid, where an unusually large number of previous shipments from shipper have been refused or unclaimed at destination, and the company has in consequence been put to considerable inconvenience, annoyance, and expense, and has been unable to realize, even after the sale of the articles shipped, the total freight and storage charges. *Ward & Co. v. Chicago & N. W. R. Co. (Ill.)* 1003.

SERVITUDE.

Carriage of freight on street cars, as additional servitude on street,
see Constitutional Law, 4.

SHUTTING OFF.

Of water, see Service, 26-29.

SIGNALS.

Automatic, on railroads, see Service, 98.

SINKING FUND.

Method of computing depreciation, see Depreciation, 9-11.

SITUS.

Of rolling stock for purpose of taxation, see Taxation, 1-5.

SLIDES.

Suspension of railroad service because of snow, earth or rock
slides, see Service, 115, 116.

SLIDING SCALE.

For gas rates, see Rates, 32.

For electric rates, see Rates, 85.

SNOW.

Suspension of railroad service because of snow slides, see Service,
115.

STANDARDS.

Of telephone service, see Service, 70-74.

STATE REGULATION.

Of commerce, see Commerce.

STATION.

Adequacy of station service, see Service, 110-114.

Installation of telephone in, see Carriers, 3; Service, 117, 118.

Rates for telephone, installed in, see Rates, 55.

STATUTE OF LIMITATIONS.

See Limitation of Actions.

STATUTES.

Determination of validity of, by Commission, see Commissions, 1.

Jurisdiction of Commission over complaint under statute providing
for prosecution by attorney general, see Commissions, 15.

Power of Commission to reduce statutory maximum rate, see Rates,
3.

Restricting issuance of stock to actual investment as confiscatory,
see Return, 2.

STATUTES—continued.**Who may assail validity.**

1. A carrier cannot object on constitutional grounds to the procedure under Ky. Stat. § 829, for the recovery of reparation for payments previously made to it for transportation in excess of the rates found by the State Railroad Commission to be reasonable, because on the subsequent trial in the courts to enforce the Commission's reparation order there is no right to adduce evidence other than such as was presented to the Commission unless the court shall first be satisfied that the evidence is such as could not have been produced before the Commission with the exercise of reasonable diligence, where there is nothing to show that such carrier has or could have any defense to the payment of reparation that it has not already either interposed or waived in the proceeding before the Commission, or to show that it has any evidence to be adduced before the court that it would be prevented from introducing by the effect of this restriction. *Louisville & N. R. Co. v. Finn* (U. S.) 121.

Title.

2. The fact that the subject, and not the object, of a statute is stated in the title, does not render it defective under the Virginia Constitution, prescribing that no law shall embrace more than one object, which shall be expressed in the title. *Com. ex rel. Richmond v. Chesapeake & O. R. Co.* (Va.) 488.

Construction of adopted statute.

3. The Idaho public utility law having been taken almost literally from the California law, the interpretation theretofore placed upon the latter statute by the California Commission was presumptively adopted. *Re Idaho Light & P. Co.* (Idaho) 2.

Amendments.

4. An unconstitutional act may be amended. *Com. ex rel. Richmond v. Chesapeake & O. R. Co.* (Va.) 488.

5. An act purporting to amend a statute that has been repealed is not void on the theory that there was no law in existence which could be amended, where, if fairly construed, the amendatory act is a complete statute in itself, and where by the ordinary rules of construction its meaning can be ascertained. *Com. ex rel. Richmond v. Chesapeake & O. R. Co.* (Va.) 488.

STEAM POWER PLANT.

Depreciation of, see *Depreciation*, 10, 11, 17.

STEREOPTICON.

Electric rates for, see *Rates*, 74.

STOCK DIVIDENDS.

Issuance of, see *Security Issues*, 9.

STOCK FOOD.

Rates on, see *Rates*, 171, 175-177.

STOCKHOLDERS.

Discrimination in rates, see Rates, 44-49.

STOCKS.

Valuation of stocks in other companies, see Valuation, 40.

See also Security Issues.

STORAGE.

Charge for storage of explosives, see Rates, 185.

STORE.

Apportionment of cost of, see Apportionment, 7.

STRAIGHT LINE.

Method of computing depreciation, see Depreciation, 10.

STREET.

Jurisdiction of Commission over obstructions to highway, see Street Railways, 2.

STREET RAILWAY.

Accounting for, see Accounting.

Interstate commerce by, see Commerce, 7, 8.

Carriage of freight by, as additional servitude, see Constitutional Law, 4.

Extension of service, see Service, 19, 20.

Return to which company is entitled, see Return.

For rates of street railways, see Rates, 153-159.

For service of street railways, see Service, generally; and particularly, 80-92.

For security issues by street railways, see Security Issues.

For valuation of street railways, see Valuation.

Jurisdiction and functions of Commission.

1. The Commission has no jurisdiction to enforce a local assessment for paving against an electric railroad company. *Orvis v. Chicago & M. Electric R. Co.* (Ill.) 1000.

2. The Commission has no jurisdiction to compel a railway company to maintain streets, upon which its tracks are laid, in such a manner as not to interfere with the public use, since this is a matter within the control of the municipal authorities. *Orvis v. Chicago & M. Electric R. Co.* (Ill.) 1000.

3. It is not within the power of the Commission to operate street car systems and to lay out all their schedules, its province merely being to compel reasonably adequate and efficient service, leaving the details of management and operation to the company. *Re Georgia R. & Power Co.* (Ga.) 901.

4. The Commission is without jurisdiction in the first instance to compel a street railway to assume the carriage of freight, even though its franchise grants the requisite authority, if the granting words are permissive only, and not mandatory, and the street railway has never

STREET RAILWAY—continued.

undertaken such service. *Wisconsin Veterans' Home v. Waupaca Electric Light & R. Co. (Wis.)* 251.

5. The Commission is without jurisdiction to require a street railway to carry freight, in the absence of obligation imposed upon it by its franchise, inasmuch as the duty to carry freight is not inherent in the business. *Wisconsin Veterans' Home v. Waupaca Electric Light & R. Co. (Wis.)* 251.

Carriage of freight by.

Power of Commission as to, see *supra*, 4-6.

6. A city has the power to grant a street railway company the right to carry passengers separate and apart from the right to carry freight, under a statute providing that a city may grant to a street railway the use of its streets to lay tracks and run cars for carriage of freight and passengers. *Wisconsin Veterans' Home v. Waupaca Electric Light & R. Co. (Wis.)* 251.

7. Permission to carry freight within a city will not be inferred from an ambiguous provision in a street railway franchise that parcels other than hand baggage may be carried upon the cars, especially where an ordinance granting the right, afterwards passed by the common council, was defeated upon submission to popular vote. *Wisconsin Veterans' Home v. Waupaca Electric Light & R. Co. (Wis.)* 251.

SUBSCRIBER.

Right of, to select telephone service, see *Service*, 50.

Inspection of telephone appliances on premises of, see *Telephones*, 8.

Right of company to purchase or rent telephones owned by, see *Telephones*, 5.

Rule requiring subscribers to own appliances or securities before service, see *Service*, 47-49.

SUBWAY.

Allowance of rental of, in return, see *Return*, 24.

SUFFICIENCY.

Of evidence, see *Evidence*, 7.

SUNDAY.

Hour of telephone service on, see *Service*, 76.

SURPLUS.

Allowance for, in return, see *Return*, 30-32.

SUSPENSION.

Of telephone service, charge during, see *Rates*, 139.

Of service by railroad, see *Service*, 115, 116.

SWITCHING.

On railroad, rates for, see Rates, 180, 182.

Charge for telephone, see Rates, 135, 136, 148.

Definition of industrial switching, see Industrial Switching.

SYSTEM.

Change of rate forming part of, see Rates, 2.

TANGIBLE PROPERTY.

Valuation of, see Valuation, 40-50.

TARIFF.

See Rates.

TAXATION.**Situs.**

1. The state has the right to change the common-law situs of rolling stock for taxation, and there is nothing in the Virginia Constitution which limits the power of the legislature to do so. *Com. ex rel. Richmond v. Chesapeake & O. R. Co. (Va.)* 488.

2. The Virginia legislature, by the act of March 18, 1914, entitled, "An Act to Amend and Re-enact an Act Entitled 'An Act in Relation to the Assessment for Local Taxation, of the Rolling Stock of Railroad Corporations, Approved March 12, 1912,'" exercised its power to fix the situs of rolling stock for taxation, in a constitutional way, and the act is therefore effective. *Com. ex rel. Richmond v. Chesapeake & O. R. Co. (Va.)* 488.

3. The legislature may fix the situs of the rolling stock of electric and street railroad corporations for taxation, where the lines of such railways run into and through adjacent counties and into other cities and towns than the city in which the principal office of the corporation happens to be located, as under such circumstances the rolling stock has no actual bona fide situs in the city of the principal office. *Com. ex rel. Richmond v. Chesapeake & O. R. Co. (Va.)* 488.

4. A statute apportioning the value of the rolling stock of railroads among the counties, cities, towns, and school districts of a state for the purpose of local taxation, and fixing the situs therein to the extent of such apportioned value, does not violate a constitutional provision requiring, in effect, that personal property in municipalities be assessed for the purpose of local taxation at the same value it is assessed for state taxation. *Com. ex rel. Richmond v. Chesapeake & O. R. Co. (Va.)* 488.

5. A statute apportioning the value of the rolling stock of railroads among the various counties, cities, towns, and school districts of a state for the purpose of local taxation, and fixing the situs therein to the extent of such apportioned value, cannot be construed as surrendering or suspending the powers of any municipality to tax corporations or corporate property in violation of the Virginia Constitution. *Com. ex rel. Richmond v. Chesapeake & O. R. Co. (Va.)* 488.

TAXES.

Allowance for, in valuation, see Valuation, 34.

TELEGRAPHS.

Accounting for, see Accounting.

TELEPHONE BUSINESS.

In general, see Telephones, 15, 16.

Mutual telephone company as doing, see Mutual Telephone Companies.

TELEPHONES.

See also Mutual Telephone Companies.

Jurisdiction and functions of Commissions as to, see Commissions.

Jurisdiction of Commission to require relocation of telephone wires, see Service, 5.

Merger and consolidation of, see Consolidation, Merger, and Sale.

Power of Commission where local authorities have not surrendered power over, see Rates, 7, 8.

Accounting for, see Accounting.

For rates of telephones, see Rates, 112-152.

Free or reduced rates to owners of, see Rates, 50-53.

Certificate of public convenience, see Certificate of Public Convenience.

Return to which company is entitled, see Return.

For service of telephones, see Service, generally; and particularly, 42-79.

Extension of service, see Service, 17, 18.

For depreciation of telephones, see Depreciation, 8, 12, 15, 16, 18.

Effect of authorizing issuance of preferred stock, see Orders, 3, 4.

For valuation of telephone plants, see Valuation.

For security issues by telephone companies, see Security Issues.

Rule requiring subscribers to pay for injuries to equipment, see Equipment, 1, 2.

Intercorporate relations between telephones, see Intercorporate Relations, 1-3, 5-9.

Business of, as a public calling, see Public Calling.

Apportionment of earnings of physical connection, see Apportionment, 14.

Apportionment of costs of physical connection between utilities, see Apportionment, 10.

Duty of railroad as common carrier to install at depot, see Carriers, 3.

Installation of, in station, see Service, 117, 118.

Rates for, installed by railroads, see Rates, 55.

Lease of real property, see Leases.

1. Telephone companies were ordered to put into writing all contracts and agreements affecting their service or rates. Re *Teleph. Co.* (S. D.) 1032.

2. The future development of the telephone service will demand that

TELEPHONES—continued.

every local community, however small, shall be given the opportunity to communicate by telephone with the state at large, and the state at large with every local community, whenever circumstances will permit such co-operative service. *Slate Belt Teleph. & Teleg. Co. v. Blue Mountain Teleph. & Teleg. Co. (Pa.) 757.*

Powers and duties in general.

3. A telephone company must furnish telephone instruments whenever it becomes necessary to replace telephones owned by subscribers, or to make new installations. *Re Bluffs & W. Teleph. Co. (Ill.) 928.*

4. A telephone company that undertakes to furnish telephone service in a given territory should provide that service at reasonable rates to whomsoever desires it. *Re Teleph. Co. (S. D.) 1032.*

5. A telephone company may purchase or rent telephones owned by subscribers. *Re Bluffs & W. Teleph. Co. (Ill.) 928.*

Term of contract.

6. The rule of a telephone company that a patron in first subscribing for service must contract for such service for one year, after which the contract shall be self-renewing for consecutive terms of three months each, terminable at the end of any such term upon thirty days' previous written notice from either party, was approved. *Re Lafayette Teleph. Co. (Ind.) 930.*

Foreign attachments.

7. The rule of a telephone company that telephone instruments are not to be connected with any instrument or apparatus not furnished by such company, was approved. *Re Lafayette Teleph. Co. (Ind.) 930.*

Inspection of equipment on subscriber's premises.

8. The rule of a telephone company that its representative shall have authority at any proper time to enter upon the subscriber's premises for the purpose of doing necessary work upon the telephone instrument and its connections, was approved. *Re Lafayette Teleph. Co. (Ind.) 930.*

Filing of reports and records.

Penalty for failure to make report, see *Fines and Penalties, 3.*

Authority to destroy records, see *Records, 2, 3.*

9. Telephone companies were ordered to file with the Commission certified copies of all their franchises and ordinances. *Re Teleph. Co. (S. D.) 1032.*

10. Telephone companies were ordered to file with the Commission certified copies of all contracts and agreements affecting their service or rates. *Re Teleph. Co. (S. D.) 1032.*

11. Telephone companies were required to establish a regular schedule of rental rates and charges, incorporating therein any rules or conditions imposed, and to file same with the Commission. *Re Teleph. Co. (S. D.) 1032.*

12. Telephone companies were ordered to report to the Commission in their annual reports the treatment of and amount in the depreciation fund. *Re Teleph. Co. (S. D.) 1032.*

TELEPHONES—continued.

13. Certified copies of contracts between telephone companies with reference to interchange of service must be filed with the Commission. *Re Pukwana Teleph. Co. (S. D.)* 952.

"Regular use."

14. A telephone trunk line between the exchanges of two telephone companies cannot be said to be "installed and regularly used" for the transmission of toll messages, so as to create and establish a "practice pertaining to the service," when it appears that only one toll message was transmitted over the line, and that such message was to the manager of one of the companies, who at the time was in its exchange. *Northeast Kansas Teleph. Co. v. Hiawatha Mut. Teleph. Co. (Kan.)* 1016.

"Doing telephone business."

By mutual telephone company, see *Mutual Telephone Companies*.

15. "A person, corporation, or association which sets its poles and strings its wires upon the highways, which installs a central switchboard, and which gives means of communication between its immediate patrons and with those of distant organizations, cannot be said to be a private facility" not doing a telephone business, upon the theory that the cost of its maintenance is apportioned in the form of an assessment. *Reading Cent. Teleph. Co. v. Fayette Rural Teleph. Co. (Mich.)* 56.

16. Under a statute giving a railroad commission jurisdiction over all persons, corporations, and associations operating telephone lines, or exchanges doing a telephone business, the phrase "doing a telephone business" excludes only such facilities as are entirely private in character. *Reading Cent. Teleph. Co. v. Fayette Rural Teleph. Co. (Mich.)* 56.

Prefix and number.

17. The rule of a telephone company that the prefix and number assigned to a subscriber's telephone are no part of the contract with the company, and may be changed by the company at any time as the exigencies of the business may require, was approved. *Re Lafayette Teleph. Co. (Ind.)* 930.

18. A public service commission cannot order the discontinuance of the name of a manufacturing city as a telephone prefix applying to a residential district of a neighboring city, on the theory that the residents thereof are inconvenienced and damaged thereby, since the selection of a telephone prefix is a matter of business judgment, with which the Commission has no right to interfere unless the word chosen is offensive. *Phinney Ave. Improv. Club v. Pacific Teleph. & Teleg. Co. (Wash.)* 98.

Use of telephone.

19. The rule of a telephone company that telephone instruments are not to be used for receiving, transmitting, or delivering any message or communication in respect to which a consideration has been or is to be paid to any party other than the telephone company, except as permitted by its rules, was approved. *Re Lafayette Teleph. Co. (Ind.)* 930.

TELEPHONES—*continued*.

20. The rule of a telephone company that telephone instruments are to be used only by the subscriber, his tenants, and employees, when engaged in the subscriber's business only, was approved. Re Lafayette Teleph. Co. (Ind.) 930.

Removal of telephone.

21. A rule of a telephone company that notice of removal of the telephone instrument shall be in writing was approved. In Re Clark County Teleph. Co. (Wis.) 359.

22. The rule of a telephone company that telephone instruments are not to be removed from subscriber's premises by anyone except a representative of the company was approved. Re Lafayette Teleph. Co. (Ind.) 930.

Directory.

See also Service, 58-60.

23. The rule of a telephone company that it shall in no case be liable for damages accruing from errors or omissions in the compilation or printing of its directory was approved. Re Lafayette Teleph. Co. (Ind.) 930.

TEMPERATURE.

Regulation of temperature under street cars, see Service, 86.

TERM.

Of telephone contract, see Telephones, 6.

TERRITORIAL AGREEMENTS.

Between corporations, enforceability of, see Intercorporate Relations, 1, 2.

THROUGH SERVICE.

Of street railway, see Service, 80, 81.

Of telephone company, see Service, 69.

TICKETS.

Package or coupon for street railways, see Rates, 157, 159.

TIME LIMIT.

In bills of lading for claims for damages against carriers, see Carriers, 2.

TITLE.

Validity of statute as dependent upon title, see Statutes, 2.

TOWN.

Division of costs of maintaining crossing over railroad, see Apportionment, 12.

TRACKLESS TROLLEY.

1. A certificate of public convenience will not be granted by the Pennsylvania Public Service Commission to a foreign corporation to engage in the operation of a trackless trolley within the state of Pennsylvania, in the absence of any provision of the state legislature for the operation of such a trolley over the public roads and highways of the commonwealth. *Re Perkiomen Electric Transit Co. (Pa.)* 82.

TRAFFIC.

See Carriers; Commerce.

TRAINS.

Service by, for passengers, see Service, 100-109.

TRANSFORMERS.

Of electricity, see Service, 39-41.

TRANSIT PRIVILEGES.

See Rates, 175-177.

TRAP CAR.

Service by, on railroad, see Service, 97.

TRUST.

Jurisdiction of Commission to determine whether officers of utility have violated trust, see Commissions, 3.

TURNING ON AND OFF.

Of water, charges for, see Rates, 109.

UNFAIR COMPETITION.

Jurisdiction of Commission over complaint under unfair competition statute, see Commissions, 15.

UNIT COSTS.

Apportionment for purpose of estimating, see Apportionment, 4, 5.

USE.

Increase in, as affecting rates, see Rates, 22-25.

UTILITY COMMISSIONS.

See Commissions.

VALUATION.

I. In general.

II. Theories of valuation.

III. Elements to be considered.

IV. Ascertainment of value.

V. Valuation as affected by manner of acquiring property.

VI. Special elements affecting value.

VALUATION—*continued.*

VII. Of tangible property.

VIII. Of intangible property.

IX. Valuations fixed for particular properties.

I. In general.

1. The amount added to the plant account on the books of an electric light and power company, to offset a like amount credited to capital stock, was excluded by the Commission in arriving at the total investment in the plant, where the entry did not represent any real increase in the investment or in plant expenditure. *Meek v. Consumers E. L. & P. Co.* (Mo.) 956.

2. It was held useless to say how much of the stock and bonds of a public utility were chargeable to the electrical properties, and how much to the balance of the property, inasmuch as such stock and bonds covered the entire property and could not be segregated. *Public Service Commission v. Pacific Power & Light Co.* (Wash.) 88.

3. The market value of the stock of a public utility company was held to be unascertainable, where, so far as the Commission could determine, the stock was not at the time, and had not recently been, on the market. *Public Service Commission v. Pacific Power & Light Co.* (Wash.) 88.

4. The Commission will allow a greater value than that claimed by a public utility if, by reason of its own investigation, it is convinced that the company is entitled thereto. *Re Oblong Gas Co.* (Ill.) 598.

Definitions.

5. The term "original cost" in California means the original book cost, and is defined as the actual expenditures chargeable to capital account, in accordance with the Interstate Commerce Commission's classification, in cash or its equivalent in terms of cash, by the public utility for its operative property in the state of California, as of date of valuation. *Re Sugar Pine R. Co.* (Cal.) 728.

6. The term "reproduction cost" of a railroad in California means the estimated cost in cash of acquiring the operative right of way and other operative real estate, and of reproducing, in the condition in which it was acquired, the other physical property of the public utility in the state of California, as of the date of valuation; to which are added overhead expenditures for engineering, law, interest, and commission, and other similar items. *Re Sugar Pine R. Co.* (Cal.) 728.

7. The term "reproduction cost less depreciation" in California means the reproduction cost less the diminution in the value of the physical elements of the property, due to use, age, obsolescence, and inadequacy, or other causes, this diminution being called "depreciation," and plus the increase in the value of the physical elements of the property, due to age or other causes, this increase being called "appreciation." *Re Sugar Pine R. Co.* (Cal.) 728.

VALUATION—*continued.**II. Theories of valuation.***Cost of reproduction.**

See also *supra*, 6, 7.

8. The cost of reproduction is not the sole controlling test of earning power, especially when the rates yield all that the capital employed under statutory restrictions limiting stock issues to investment has ever required. *Re Northampton Gas Petition (Mass.)* 618.

9. A valuation of the property of a public utility by the reproductive method in rate cases, even though free from the bias necessarily attending the findings of experts representing their respective employers, has to be based upon premises and experiences open to a wide range of debate, and its only purposes are to ascertain a figure upon which a return may be computed, with only such aid in dealing with the rate of return as is afforded by the demands of investors with respect to securities, which, in their turn, have little or no relation to the valuation of the property which they represent. *Re Northampton Gas Petition (Mass.)* 618.

10. Neither the cost of reproducing the existing plant or system nor of replacing an existing system or plant by an equivalent one is final as determining the cost new or present value of a public-service property, but both may be of evidential value in determining the actual fair value thereof. *In Re Janesville Water Co. (Wis.)* 178.

11. The cost of reproducing equipment may be based upon the cost of reproducing the identical equipment rather than the equivalent equipment, where there is nothing to indicate that the original investment in the equipment was unwisely made, or that a reasonable degree of regard for the ultimate economy of construction would have required the installation of a different equipment, although what it would cost to replace it by equivalent units of equal capacity but of different design may also be considered. *In Re Janesville Water Co. (Wis.)* 178.

12. In estimating the cost of reproduction of iron mains of a waterworks property for municipal purchase, the actual weights of the pipe should be used if the valuation is on the basis of replacing the identical plant and the weights that would be used in constructing a plant in accord with modern practice if the valuation is based on replacing the plant with an equivalent system. *In Re Janesville Water Co. (Wis.)* 178.

13. The cost of materials on hand for construction purposes should not be added to the estimated value of a plant of a public-service corporation, where the accounting practice of the company has been to charge construction materials to construction as purchased rather than as used, since this would result in a duplication of the charging of such material to property and plant. *In Re Janesville Water Co. (Wis.)* 178.

III. Elements to be considered.

14. In estimating the fair value of a waterworks property for municipal purchase, the actual investment, the cost of reproduction new, and the cost of reproduction less depreciation, are the most important factors. *In Re Janesville Water Co. (Wis.)* 178.

VALUATION—*continued.*

15. The fair value of the plant and business of a waterworks company for municipal purchase must be determined from the evidence bearing upon the value of the different elements which go to make up the final value of the property. In *Re Janesville Water Co.* (Wis.) 178.

16. In connection with the purchase of property of a public-service corporation by a municipality under an indeterminate permit, it is necessary that the Commission give consideration to all lines of evidence tending to show the fair value of the property. In *Re Janesville Water Co.* (Wis.) 178.

17. In a valuation proceeding the following matters are essential to the inquiry: (1) Organization, construction, and operation; (2) stocks and bonds; (3) revenues and expenses; (4) original cost; (5) reproduction cost; (6) reproduction cost less depreciation. *Re Sugar Pine R. Co.* (Cal.) 728.

18. A telephone company, upon joint agreement with a municipality as to the valuation of its exchange property for the establishment of a proposed rate schedule, was ordered by the Commission upon the filing and ratification of such agreement to submit to the Commission and to the municipality an inventory of such property, together with a detailed statement of its accounting records, and to subject its property and accounts to the inspection and examination of the Commission's engineers and accountants. In *Re Valuation of Joplin Exch. of Home Teleph. Co.* (Mo.) 213.

19. In fixing the fair present value of the property of an electric light and power company for rate-making purposes the Commission considered the original cost of construction, including the amount expended in permanent improvements, the amount of bonds and stock, the present as compared with the original cost of construction, and the probable earning capacity under the rates fixed as maxima, including the sum required to meet operating expenses and allowances for return, surplus, contingencies, and depreciation. *Meek v. Consumers E. L. & P. Co.* (Mo.) 956.

IV. Ascertainment of value.

20. The amount which should have been charged to plant construction, where the capital account had been overcharged with operating expenses, was held determinable by subtracting an 8 per cent annual depreciation and maintenance allowance on the cost of reproduction new, from the sum of the amounts actually charged to the capital account and to maintenance. *Re Maxwell & B. Teleph. Co.* (Neb.) 471.

21. The estimated cost of reproduction of rock excavation for the purpose of laying water mains, based upon records of the actual width of trenches, was held to be substantially correct where there was nothing to indicate that different conditions would prevail if the distribution system were constructed at the time of the valuation. In *Re Janesville Water Co.* (Wis.) 178.

Book cost.

22. No conclusion as to the actual present value of a water company's property can be based upon the original book entry of the actual

VALUATION—continued.

cost of the plant at the time of installation, where no allowance for depreciation has been made. *Re Reynolds (Conn.) 892.*

23. Mere book value is objectionable as a basis for determining rates, for the reasons that such value generally includes cost of discarded property which has only a scrap value, brings in such items as organization, stock watering, stocks at a bonus, etc., and does not include appreciation or depreciation. *Re Ladysmith Lighting Co. (Wis.) 1050.*

24. The exact original book cost of the property of a public service company cannot be determined where the total investment account contains amounts paid for replaced property as well as the cost of the replacements, and where there has been no allowance for depreciation. *Meek v. Consumers E. L. & P. Co. (Mo.) 956.*

Capitalization of earning.

25. Earning power as a test of value cannot be capitalized when the basis of earning power, the rate or price, is itself in question. *Re Northampton Gas Petition (Mass.) 618.*

Engineer's estimates.

26. In valuing the property of a waterworks company for municipal purchase, the estimates of the commission engineers as to the cost of laying mains, based on actual inspection of conditions, constitute better evidence of the cost of reproduction than the evidence of the average cost of laying mains in a number of other places. *In Re Janesville Water Co. (Wis.) 178.*

27. The conclusions of the Commission in fixing the valuation of a waterworks property for municipal purchase, are justified, although the results obtained by its engineering department upon which such conclusions rest are admittedly estimates. *In Re Janesville Water Co. (Wis.) 178.*

V. Valuation as affected by manner of acquiring property.**Valuation of contributed property.**

28. In estimating the cost of reproduction of pipes and mains of a waterworks company for municipal purchase, some consideration should be given to the fact that a number of extensions were made at the expense of consumers, and that there is no record of the transfer to the company of many of such extensions, where the total cost of such untransferred extensions would be several hundred dollars, although the statement of the cost of all of such extensions would be impracticable. *In Re Janesville Water Co. (Wis.) 178.*

VI. Special elements affecting value.**Overhead expenses.**

29. The Commission will make an allowance for overhead expenses, including engineering, interest during construction, legal expenses, and valuation omissions, in valuing a public service property for rate-making purposes, although the company has made no claim therefor. *Re Oblong Gas Co. (Ill.) 598.*

30. An allowance, in the valuation of the property of a public service company, of 13 per cent, together with an allowance of 8 per cent on

VALUATION—*continued.*

land, was held to be a reasonable provision for all overhead charges. *Meek v. Consumers E. L. & P. Co. (Mo.)* 956.

31. An allowance, in the valuation of the property of a public service company, of 5 per cent for engineering and supervision, was held reasonable. *Meek v. Consumers E. L. & P. Co. (Mo.)* 956.

32. An allowance in the valuation of the property of a public service company of 2 per cent for legal and organization expenses was held reasonable. *Meek v. Consumers E. L. & P. Co. (Mo.)* 956.

33. An allowance, in the valuation of the property of a public service company, of 2 per cent for contingencies, was held reasonable. *Meek v. Consumers E. L. & P. Co. (Mo.)* 956.

34. An allowance in the valuation of the property of a public service company, of $1\frac{1}{2}$ per cent for taxes and insurance, is reasonable, where the actual taxes paid by the company, on a physical valuation, would hardly amount to the rate of 1 per cent. *Meek v. Consumers E. L. & P. Co. (Mo.)* 956.

35. An allowance, in the valuation of the property of a public service company, of $2\frac{1}{2}$ per cent for interest during construction, based upon a rate of 6 per cent per annum applied for half of a ten months' period of construction, is reasonable where 6 per cent is the usual rate of interest for long-term loans. *Meek v. Consumers E. L. & P. Co. (Mo.)* 956.

36. The sum of \$500 for incorporating, legal and other necessary expenses incidental to organization, and \$1,000 for operating capital, interest during construction, and possible operating deficit during early period of operations, were considered reasonable allowances to be included in the cost of construction of a water company's properties as a basis for an issue of securities, where the total cost of construction was found to be about \$35,000. *Re Loogootee Water Co. (Ind.)* 534.

Discount on bonds.

37. An allowance may be made for discount on bonds in the valuation of a public-service property for municipal purchase, where the discount is a normal and reasonable cost of getting money to finance the utility, where the utility is needed in the community, and where the money for financing it can be obtained on no better terms. *In Re Janesville Water Co. (Wis.)* 178.

Pavement over mains.

38. In estimating the cost of reproduction of a waterworks property for municipal purchase, the Commission cannot determine what weight should be given to the estimated cost of pavement over mains, where the record does not show that the pavement was actually cut through in laying the mains. *In Re Janesville Water Co. (Wis.)* 178.

39. The rejection of the item of estimated amount which it would cost now to pave over pipe lines in an appraisal of a water company's plant for rate fixing purposes was approved. *Corona v. Corona City Water Co. (Cal.)* 782.

VII. Of tangible property.**Stock in other companies.**

40. The stock owned by a water company in a mutual water com-

VALUATION—continued.

pany which was all located on high-line ditches for which the use of pumps was necessary was given a valuation in a rate proceeding of \$1.25 per share, where it appeared that, because of the necessity of using pumps, an additional charge of \$50 was made for locating stock on the high-line ditches, and that water could be efficiently obtained for the water company's consumers only through the high-line ditches. *Corona v. Corona City Water Co.* (Cal.) 782.

Property not in use.

41. Electric generators which have not been in use for several years cannot be included in a valuation for rate-making purposes of the property of an electric light and power company "used and useful" in serving the public, although the company expects to put them in service again, as a reserve, for which service they will probably be necessary. *Meek v. Consumers E. L. & P. Co.* (Mo.) 956.

—Discarded property.

42. The practice of crediting discarded property to property and plant at its salvage value only, instead of at its cost new, is improper, since the effect is to keep the difference between the original cost and the amount received for salvage permanently charged to property and plant. *In Re Janesville Water Co.* (Wis.) 178.

—Investment in excess of present needs.

43. Present users cannot be expected to pay a rate sufficiently high to yield a fair return on the money invested, in excess of the amount necessary to properly provide for the present consumption. *Potee v. Brooklyn & C. B. Light & Water Co.* (Md.) 42.

44. Upon a proposal to increase water rates, in determining whether the sum upon which the company based its estimate of return was too high, consideration was given to evidence that the company had provided a plant sufficiently large not only to care for present prospective customers, but also for all customers that might be added for a number of years to come. *Potee v. Brooklyn & C. B. Light & Water Co.* (Md.) 42.

Land.

45. In fixing the value of the land of an electric light and power company in a valuation for rate-making purposes, and 8 per cent overhead allowance was added to the estimated value of the land, which was not depreciated for present condition. *Meek v. Consumers E. L. & P. Co.* (Mo.) 956.

46. The actual cost of land upon which a water utility was located, together with the cost of improvements ordered by the Commission, was taken as the basis of the amount upon which a utility was entitled to earn a return, where the land was acquired without separate payment for the utility property. *Re Dell Segno* (Cal.) 857.

47. The value of the land of an electric light and power company should not be determined by capitalizing the saving, due to delivering coal in carload lots, over the cost of hauling it in wagons, owing to the favorable location of the property with reference to switching facilities. *Meek v. Consumers E. L. & P. Co.* (Mo.) 956.

VALUATION—*continued*.

48. The basis of valuation of land for rate-making purposes is its fair present value; that is, not what it might have cost, but what it is worth at the date of the valuation. *Meek v. Consumers E. L. & P. Co. (Mo.)* 956.

Buildings.

49. Bricks for a boiler setting in a power house go with the boiler and should not be included in an estimate of the value of the building. *Meek v. Consumers E. L. & P. Co. (Mo.)* 956.

Working capital.

50. An allowance of \$1,900 for working capital is excessive where the entire maintenance and operating expenses of the company are only slightly in excess of \$6,000 per year. *Coalinga v. Pleasant Valley Water Co. (Cal.)* 575.

*VIII. Of intangible property.***Going value.**

51. Even if a city could condemn the franchise of a utility apart from the other property, it must pay to the company the difference in value of the property including the franchise, before and after taking the franchise, and including the so-called going value. *Neenah v. Wisconsin Traction, Light Heat & P. Co. (Wis.)* 372.

52. In estimating the accumulated gains or losses of a public-service company in order to determine the allowance which should be made for going value in a valuation for municipal purchase, it is unnecessary to include depreciation in the computation, where the allowance therefor is already included among the operating expenses. *In Re Janesville Water Co. (Wis.)* 178.

53. In determining the accumulated losses incurred in building up the business for the purpose of determining the amount which should be allowed for going value of a waterworks plant to be taken over by a city, it was held that an allowance of \$2,000 per year for officer's salaries should have been included under operating expenses, as constituting a reasonable charge against the cost of building up the business. *In Re Janesville Water (Wis.)* 178.

54. The extent of accumulated losses actually incurred in building up the business, and the probable cost which would have to be incurred in an equivalent plant in building up the business to the point of a reasonable return, are among the more important factors which must be considered by the Commission in determining the allowance which should be made for going value. *In Re Janesville Water Co. (Wis.)* 178.

55. The value to be fixed by the Commission upon the purchase of the property of a waterworks company by a municipality under an indeterminate permit must be the value of the going concern, and not the value of the physical plant as an entirety distinct from the business in which the company is engaged. *In Re Janesville Water Co. (Wis.)* 178.

56. In fixing the final value of a public-service property for municipal purchase, consideration may well be given to the probability that it

VALUATION—*continued*.

would cost between 5 per cent and 15 per cent of the total value of the physical plant to build up the business of a new utility under similar conditions, to a point where a reasonable return would be earned upon the investment. *In Re Janesville Water Co. (Wis.)* 178.

57. The Commission is not justified in accepting conclusions as to the cost of building up the business of a public-service corporation based upon data reported by the company, not substantiated by a careful audit of its records. *In Re Janesville Water Co. (Wis.)* 178.

58. The rejection of the item of going concern value by the Commission's engineer in an appraisal of a water company's plant for rate fixing purposes was approved. *Corona v. Corona City Water Co. (Cal.)* 782.

59. An allowance will not be made to represent losses in the creation of a portion of the company's business in a valuation for rate purposes, where such losses have been more than repaid from earnings. *Coalinga v. Pleasant Valley Water Co. (Cal.)* 575.

60. The electric property of a public utility was valued as a going concern. *Public Commission v. Pacific Power & Light Co. (Wash.)* 88.

61. The Commission, valuing the property of an electric light and power company for rate-making purposes, did not attempt to fix a separate and distinct allowance for going value, but took into account the fact that the plant was in successful operation as a going concern, where there was no satisfactory evidence as to the cost of establishing the business, and where it appeared that the company had paid to the holder of its stock and bonds large amounts in dividends and interest. *Meek v. Consumers E. L. & P. Co. (Mo.)* 956.

62. An allowance of 20 per cent of the actual investment, with an overhead allowance of 15 per cent included in the investment, will not be made for going value where there is nothing in evidence with reference to the valuation of the particular property that warrants it. *In Re Janesville Water Co. (Wis.)* 178.

Franchises.

63. The cost of a franchise should not be added to the estimate of the cost of reproducing the property of a public service company, which includes an allowance for legal and organization expenses and contingencies, more than sufficient to take care of such charge. *Meek v. Consumers E. L. & P. Co. (Mo.)* 956.

64. The expense of a city election incurred by an electric light and power company, in obtaining its franchise, is allowable in the valuation of the company's property for rate-making purposes, under a statute which forbids the capitalization of any franchise, beyond the amount actually paid to the state or to any political subdivision thereof. *Meek v. Consumers E. L. & P. Co. (Mo.)* 956.

Water rights.

65. In valuing the electrical property of a public utility, allowance was made for the value of water rights. *Public Service Commission v. Pacific Power & Light Co. (Wash.)* 88.

VALUATION—*continued.*

66. An allowance will not be made for the value of underground water rights, on the theory that a water company whose property is being valued for rate purposes has by prescriptive use acquired a right to the water in addition to the value of the land, where it is not shown that the company has used the waters in such a way as to interfere with the use of other owners, or that it has taken more than its fair share thereof. *Coalinga v. Pleasant Valley Water Co. (Cal.)* 575.

67. The sum of \$80,000 was held to be about the maximum value fairly allowable for water-power rights, where it appeared that the theoretical saving over the cost of producing the supply by a steam plant would be only \$8,000 per year, if the water plant had been equipped with an auxiliary steam plant necessary to produce a continuous supply of power, and where it also appeared that the theoretical estimates presupposed the ability of the company to dispose of a large quantity of power, and the evidence did not demonstrate the marketability of power under those conditions. *Re Rhinelander Power Co. (Wis.)* 652.

IX. Valuation fixed for particular properties.

68. Upon the valuation of the property of the Sugar Pine Railway Company in California, the Commission found the reproduction cost of the operative physical property to be \$355,511.65, as of June 30, 1913, and the present value to be \$212,619.27, as of the same date. *Re Sugar Pine R. Co. (Cal.)* 728.

69. An allowance for the cost of reproduction of an electric generator of \$2,200, f. o. b. factory, approximating \$14.50 per kilowatt is reasonable for an obsolete belted, alternating type of equipment, designed to operate at fifty revolutions per minute, especially where the estimate of the value of such generator, in its present condition, is considerably higher than the actual cost to the company. *Meek v. Consumers E. L. & L. Co. (Mo.)* 956.

70. An investment of \$86.60 per kw. of station capacity for a steam Turbo-Generator plant is not excessive. *Re Rhinelander Power Co. (Wis.)* 652.

Agreed valuation.

71. A valuation of the property of a street railway company agreed upon between a complaining city and the company will be taken by the Commission as the basis for determining the reasonableness of a proposed reduction in fares from 5 cents to 3 cents during rush hours, however pertinent and forcible objections to any part of such valuation might be in an open case involving the valuation of such property. *Re Rochester (N. Y.)* 1095.

VALUE.

Fixing of, see Valuation.

Amount of security issues dependent upon value of property covered by, see Security Issues, 39-44.

Enhanced value of land as affecting rates, see Rates, 12.

Apportionment of, see Apportionment.

VEGETABLES.

Rates on, see Rates, 186.

VESTIBULE.

Jurisdiction of Commission to require vestibules on street cars, see Service, 3.

On street cars, see Service, 88, 89.

VETERINARY SURGEON.

Telephone in residence of, as business or residence telephone, see Service, 53.

WAGES.

Allowance of in return, see Return, 25.

WATER.

Apportionment of values of water company, see Apportionment, 1.
Jurisdiction and functions of Commission as to, see Commissions.

Right to review amount of compensation for property of water company taken, see Appeal and Review, 2.

Jurisdiction of Commission to require facilities for the interchange of traffic between land and water carriers, see Service, 2.

Consolidation and merger of, see Consolidation, Merger, and Sale.

Effect on carriers of competition by, see Carriers, 1; Rates, 173, 174.

Grant of certificate of public convenience to municipality for erection of waterworks, see Certificate of Public Convenience, 2, 10.

For depreciation of water plant, see Depreciation, 2, 6, 9, 19-24.

For rates of water plant, see Rates, 104-111.

Return to which company is entitled, see Return.

For security issues by water companies, see Security Issues.

For service of water plant, see Service, generally; and particularly, 25-29.

Extension of service, see Service, 16.

For valuation of water plant, see Valuation.

Irrigation, see Irrigation.

Modification of order fixing terms for taking of property by city, see Municipalities, 2.

Water company as a public utility, see Public Utilities, 2.

1. The fact that a majority of the lands bordering a lake used for storage purposes by a light and power company are burdened with flowage privileges does not impair the right of the remaining lands to protection from overflow. *Re Long Lake Improv. Asso.* (Wis.) 506.

2. A light and power company was ordered to maintain the level of a lake used by it for the storage of water between certain maximum and minimum heights, a somewhat greater maximum level being permitted for a period of twenty-four hours in times of flood; it appearing that the maximum variation in levels so allowed would probably provide the company with sufficient storage capacity, and that the maintenance of such constant maximum and minimum levels would afford protection

WATER—continued.

to the lands and structures bordering the lake. *Re Long Lake Improv. Asso. (Wis.) 506.*

Franchises.

3. The requirement of written acceptance within thirty days of its passage, contained in an ordinance granted to an aqueduct company to operate within a borough, is waived where both the borough and the company have acted upon the ordinance for over ten years. *Glen Rock v. Bergen Aqueduct Co. (N. J.) 937.*

4. An aqueduct company, operating within a borough under an ordinance which obligates it to make extensions of its main whenever certain guaranties are furnished it, cannot escape such obligation on the ground that an option to purchase its property given to another borough may be exercised within so short a time as to render the extensions unprofitable to it, particularly where it appears that the option was given prior to its obtaining passage of the ordinance in question. *Glen Rock v. Bergen Aqueduct Co. (N. J.) 937.*

5. A franchise was granted to a milling corporation under the Wisconsin water power act of 1913, to maintain a dam for generating power, so long as the power generated did not exceed 250 horse power, without requiring reincorporation of the company under the provisions of the act requiring special incorporation where more than 250 horse power is developed, where it did not appear that there could consistently be generated more than 250 horse power of useful energy, nor that there was 250 theoretical horse power available with sufficient continuity to put the site in question in the class of plants contemplated in the section of the act requiring special incorporation. *Re New Richmond Roller Mills Co. (Wis.) 422.*

6. Where a milling company had acquired a franchise by legislative enactment to construct its first dam in excess of 250 horse power capacity on a certain river, and had constructed its second dam before the Wisconsin water power act of 1913 went into effect, it was not required to reincorporate under the water power act in order to become eligible for a franchise to maintain its second dam, even though the coupling up of the second dam with the first made a combined energy in excess of 250 horse power. *Re New Richmond Roller Mills Co. (Wis.) 422.*

7. Permission was granted to individuals to incorporate under the provisions of the Wisconsin water power act, and a franchise to the corporation was approved to construct and operate a dam for more than 250 horse power of energy at a proposed site on a certain river, or at any other site or location at which, when such dam was constructed and operated, there would be no impairment of the riparian rights under the franchise of any grantee held either by virtue of legislative enactment or under the so-called Wisconsin water power act. *Re New Richmond Roller Mills Co. (Wis.) 422.*

Dams.

8. The fact that the power which would be furnished by a single highhead dam would exceed that which would be produced by two lower-

WATER—continued.

head dams at the peak period of four hours per day does not show that it is of such superior efficiency as to warrant the destruction of a lower-head dam plant of another petitioner to make room for it, especially where the lower dam is operated in conjunction with another which gives it a somewhat increased peak capacity. Re New Richmond Roller Mills Co. (Wis.) 422.

9. A dam may be operated without a franchise for the period of six months under the Wisconsin water power act, before it becomes a public nuisance. Re New Richmond Roller Mills Co. (Wis.) 422.

10. A corporation was ordered to construct in its dam, incapable of carrying off flood waters without materially raising the river to the damage of property owners, a single gate sufficient for the escape of such waters, and to open the same when the river attained a certain height. Re Regulation & Control of Level & Flow of Water in Rock River (Wis.) 433.

WATER COMPETITION.

Effect of, see Carriers, 1; Rates, 173, 174.

WATER PUMPS.

Depreciation of, see Depreciation, 20.

WATER RIGHTS.

Valuation of, see Valuation, 65-67.

WEATHER.

Conservation of natural gas during cold weather, see Rates, 59.

WINTER.

Change of railway service during, see Service, 99.

WIRES AND CABLES.

Jurisdiction of Commission over location of, see Commissions, 6.

WORKING CAPITAL.

Allowance for, in valuation, see Valuation, 50.

X-RAY.

Rate classification for electricity for, see Rates, 73, 103.

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